

1
2
3
4
5
6
7
8
9
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11
12
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VIRGINIA RACING COMMISSION

June 21, 2016

STATE CORPORATION COMMISSION
TYLER BUILDING
COURTROOM A
1300 EAST MAIN STREET
RICHMOND, VA 23219

Commencing at 10:00 a.m.

COMMISSION MEMBERS:

D.G. Van Clief, Jr., Chairman
Carol G. Dawson, Vice Chairman
I. Clinton Miller
J. Sargeant Reynolds, Jr.
Dr. Charles Steger

COMMISSION STAFF:

David S. Lermond, Jr., Interim Executive Secretary
Kimberly C. Mackey, Office Administrator

ATTORNEY GENERAL'S OFFICE:

J. Duncan Pitchford, Esquire

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I N D E X

		Page
1		
2		
3	1. Call to Order	3
4	2. Appeal Hearing In the Matter of Lilith Boucher	3, 149
5	3. Approval of April 27 th meeting minutes	66
6	4. New Business	
7	a. Executive Secretary Search Committee Report	67
8	b. Racing Safety and Medication Committee Assignments	68
9	c. Request from VHBPA and VTA for Owner Bonus Program	73
10	d. Request from VHBPA for Graded Stakes Races and Additional Maiden Race	101
11	e. Report from the Virginia Equine Alliance	
12	1. OTB Development	128
13	2. Shenandoah Downs	123
14	3. Morven Park	120
15	f. Approval of Satellite Wagering Facility - Breakers Sports Grill	130
16		
17	5. Public Comment Period	89
18		
19	6. Commissioners' Comments	142
20		
21	7. Closed Session	146
22		
23	8. Adjournment	161
24		
25		

1 CHAIRMAN VAN CLIEF: It is now ten o'clock, so
2 we will call the June 21st, 2016 Virginia Racing
3 Commission meeting to order. We do have a full
4 agenda today. I don't want to stifle conversation,
5 so please be complete in any remarks you have to
6 make, but also please stay focused, as we'll try to
7 get through all of this.

8 We have within the context of our commission
9 meeting today two things; an appellate process,
10 which we will begin with here in just a moment.

11 We also have a licensure hearing with regards to
12 the VEA's request for a satellite wagering facility
13 here in Richmond. In both cases, we will conduct
14 those as hearings. Any testimony will be sworn in
15 as we go.

16 I would also make note that all commissioners
17 are present at our meeting here this morning.

18 Okay. Let's move right on to the appellate
19 hearing. We have a hearing in the matter of Ms.
20 Lilith Boucher in regards to a disqualification
21 which occurred in the seventh race in the Virginia
22 Gold Cup this spring.

23 Counselor, shall we swear in the first witness?
24 What we will do today is ask the stewards to make
25 their presentation. We will swear in whoever is

1 representing our stewards this morning and the
2 commissioners will ask any questions after the
3 steward's testimony, at which point then we will
4 open it up for testimony and cross-examination by
5 counsel.

6 MR. LERMOND: Sorry, Mr. Chairman. I think it's
7 good for the record to show that Commissioner Dawson
8 will not be participating here.

9 CHAIRMAN VAN CLIEF: Thank you for that
10 reminder. Because of her relationship with the
11 Boucher family, Vice Chairman Commissioner Dawson
12 has asked to recuse herself. Please have the record
13 show she is recused from this proceeding.

14 Mr. Petramalo.

15 MR. PETRAMALO: A procedural point. Well, I'm
16 here -- first of all, I'll introduce Ms. Lilith
17 Boucher. She is the owner and trainer of Jump
18 Street -- excuse me -- Jump Ship, the horse in
19 question that was disqualified, and next to me is
20 Richard Boucher, her husband, who is the jockey of
21 the horse. We're the appellants here. I thought I
22 got to go first.

23 CHAIRMAN VAN CLIEF: Correct. Yes. I'm sorry.

24 MR. LAWS: Before you get started, if I could --

25 MR. PETRAMALO: And I'm going to limit it to

1 three-and-a-half hours. Commissioner Miller, I'm
2 kidding.

3 MR. LAWS: Just so the record is clear, the
4 hearing will be conducted under 11 Virginia
5 administrative Code 10-90-50, and because it's a
6 riding or ride infraction, the hearing will be on
7 the record, so there won't be any new evidence or
8 witnesses unless the appellant moves and the
9 Commission will have to consider that. It's
10 argument and comment only, and I understand, Frank,
11 you have two exhibits you've previously marked and
12 would like to introduce into the record.

13 MR. PETRAMALO: That's correct.

14 MR. LAWS: Could you describe Exhibit One for
15 me?

16 MR. PETRAMALO: Yes. Exhibit One is the front
17 page, notice of hearing from the Commission, and
18 then pages two through four are the stewards' report
19 after the Gold Cup, and then five is the past
20 performance charts for the seventh race, and page
21 seven is the Equibase report of the results of the
22 race, and then page eight are various portions that
23 I extracted from the VRC regs that I think are
24 applicable here.

25 with regard to Exhibit Two, we basically have

1 five frames that I've copied from the DVD supplied
2 to me by the Racing Commission. This is the videos
3 reviewed by the stewards after the race.

4 MR. LAWS: Do all the commissioners have copies
5 of Exhibit One?

6 NOTE: There is an affirmative response
7 from all commissioners.

8 MR. LAWS: Do all commissioners have copies of
9 Exhibit Two?

10 NOTE: There is an affirmative response
11 from all commissioners.

12 MR. LAWS: I'm probably the only one who doesn't
13 have a copy of either exhibit. Do you happen to
14 have an extra one?

15 MR. PETRAMALO: Yes, sir. Yes. I do.

16 COMMISSIONER MILLER: Here you go. If Carol
17 isn't participating.

18 MR. LAWS: Thank you. I appreciate it. At this
19 point, if one of the commissioners would like to
20 make a motion to accept Exhibits One and Two as part
21 of the record.

22 COMMISSIONER REYNOLDS: So moved.

23 CHAIRMAN VAN CLIEF: Do we have a second?

24 COMMISSIONER STEGER: Second.

25 CHAIRMAN VAN CLIEF: All in favor?

1 NOTE: The Commission votes in favor
2 unanimously.

3 CHAIRMAN VAN CLIEF: Opposed?

4 NOTE: There was no response.

5 MR. LAWS: Frank, whenever you're ready.

6 MR. PETRAMALO: Yes. I'd like to make a short
7 opening statement and then go to the review of the
8 video.

9 The race in question was at the Gold Cup this
10 past spring. It was the seventh race, which was a
11 VHBPA-sponsored flat race for maidens going a mile.
12 The horse owned by Lilith was Jump Ship. The horse
13 finished second and thereby earned a purse of \$5400,
14 which because it was a Virginia-bred and there was a
15 bonus program in effect, doubled the place. So
16 Lilith's horse earned \$10,800.

17 After the race, the stewards posted an inquiry
18 and they looked at the start and concluded that Jump
19 Ship had interfered with another horse and thereby
20 it disqualified Jump Ship, placed him last, eleventh
21 in the race, and of course in effect fined the
22 owner, Lilith, \$10,800. No purse.

23 We appealed that, and I think a review of the
24 record before the stewards will show three
25 independent grounds for reversing the stewards'

1 disqualification.

2 Number one, and I will refer to the actual
3 ruling in question. It's on page eight of Exhibit
4 One, and it's VRC rule 10-140-210. Basically, what
5 it says, and this is important. It says during a
6 race, no jockey shall, et cetera, et cetera, jostle
7 another horse to interfere with another jockey or
8 another horse. The key is during the race.

9 So our first point here, our first independent
10 ground is that the interference, the jostling
11 between three horses including Jump Ship occurred
12 before the race, not during the race.

13 So let me explain. As I'm sure you all know, at
14 steeple chase races, the start is not from the gate,
15 but it's from the drop of a flag. The starter goes
16 out on the track and has the horses line up in post
17 position order, one through eleven, and then drops
18 the flag and the horses race.

19 Now, saying that is much easier than doing it.
20 The starter has a difficult job trying to get eleven
21 horses out there, all high-strung Thoroughbreds
22 ready to race to line up in their proper order.

23 Now, what occurred in this case was that there
24 was jostling between three horses; number one,
25 number two and number three; number three being Jump

1 Ship.

2 But nonetheless, that jostling kind of resolved
3 itself, because at some point when the starter was
4 ready to drop the flag, the horses were all lined up
5 one through eleven the way they should have been,
6 except the number two horse, Mr. Bossy, the
7 aggrieved horse, was turned in the wrong direction
8 looking the other way. Nonetheless, the starter
9 dropped the flag, off they went. Mr. Bossy whirled
10 around and then joined the crowd.

11 So my first point is whatever jostling occurred,
12 it was before the race and it was resolved by the
13 time the race was to start.

14 The second point, another independent grounds
15 for overturning the stewards' decision is found in
16 the next regulation, again on page eight, and it
17 talks about third party interference. What it says
18 is, if a horse or jockey interferes or jostles
19 another horse, the aggressor may be disqualified,
20 unless the interfered or jostled horse or jockey was
21 partly at fault.

22 I think a review of the videotape will
23 demonstrate that the jockey and the horse that were
24 the aggrieved parties were partially at fault,
25 thereby depriving the stewards of the right to

1 disqualify Jump Ship.

2 Finally, the third independent point is the
3 punishment here, in effect a fine of \$10,800, was
4 far too excessive. Stated a simple way, the crime
5 does not justify the penalty.

6 Particularly if you look at page three of
7 Exhibit One at the top, I'm reading now from the
8 stewards' report dealing with the seventh race in
9 probably in the top paragraph. Four lines up, it
10 says in talking about this jostling, the stewards
11 determine that the interference was accidental and
12 that Mr. Boucher, the jockey, had made every attempt
13 to avoid contact. So we've got a specific finding
14 that whatever happened here was accidental, but
15 nonetheless, we get the death penalty.

16 I suggest that the proper penalty, if any, would
17 have been something less. For example, the rules do
18 provide that a horse could be put on the stewards'
19 list, which would mean in this case that Jump Ship
20 wouldn't be allowed to start in another race until
21 he demonstrated his ability to start properly. So
22 those are the three points.

23 Let me go to Exhibit Two, because I think this
24 will help guide us through a review of the DVD. If
25 you look at Tab One, this goes to the issue of

1 jostling or interference. If you look in the
2 left-hand corner of the picture where the three
3 horses are circled in red, those are -- on the left
4 is Trust Liam, in the middle is Mr. Bossy, the
5 aggrieved horse, and then three is Jump Ship.

6 Now again, please note that within the red
7 circle to the right is the starter. I know it's
8 difficult to see with the color here, but the
9 starter clearly -- that his flag up in the air. The
10 race has not started. The jostling occurs there.

11 If you go to Tab Two, you'll see a blow-up of
12 the three horses. Then going to Tab Three, you'll
13 see that the starter has got his flag up. He's
14 ready to drop it in the far left-hand corner, and
15 you'll see that all of the horses are lined up
16 across the course in the proper order one through
17 eleven, with the problem being that number two,
18 Mr. Bossy, is turned the wrong way, but this is
19 before the start. Everything is fine except Mr.
20 Bossy is looking the wrong way.

21 If you then turn over to four, you'll see again
22 in the left-hand corner the starter has dropped the
23 flag. He's started the race. Again, they're all
24 lined up. Mr. Bossy is going the wrong way. Simply
25 put, the starter probably shouldn't have started

1 that race with one horse going the wrong way.

2 Now, with regard to point two, that is assuming
3 that there was interference during the race, the
4 jockey on number two, the aggrieved horse, Mr.
5 Bossy, was at least partially at fault.

6 what we have here is an inexperienced horse and
7 an inexperienced jockey. Unlike Mr. Boucher here,
8 who has ridden over 2200 races, the jockey on Mr.
9 Bossy had only ridden eight races before this, and
10 the horse was a three-year-old, had only one other
11 race in its life. So you have a green horse and a
12 green jockey.

13 You take a look at Tab Five and it's difficult
14 to see because this is not the best picture, but
15 these are the horses as they're approaching the line
16 to start.

17 what happened is the horse in the middle, Mr.
18 Bossy, is in the wrong position. He should be in
19 position one, but what you have is the three horses
20 in question are lined up three, two, one. They
21 should have been lined up one, two, three.

22 The two horse is in the wrong position, and what
23 the video will show is that the three horse, Jump
24 Street -- Jump Ship -- I'm going to get this right.
25 Jump Ship darted in front of Mr. Bossy in order to

1 get alongside the four horse where he belonged. So
2 it should have been four, three, two, Mr. Bossy, and
3 then one, the horse in the back, Trust Liam. Well,
4 it didn't happen that way, partially because of the
5 conduct of the horse -- excuse me, the jockey on Mr.
6 Bossy.

7 So with that, the stewards under the regulation
8 lose the authority to disqualify Jump Ship.

9 Now, I think those are the only photos, but as
10 we go through the DVD, I'll try and stop them to
11 illustrate what I'm talking about. But as I said, I
12 think at the conclusion in reviewing the record
13 before the stewards, you should reach the conclusion
14 that at least on one of the three grounds there is
15 sufficient reason to overturn the stewards'
16 disqualification of Jump Ship, and I would urge you
17 to do so, which would then entitle Lilith to receive
18 the purse money that her horse earned.

19 Now we can go to the video now or you might want
20 to hear an opening statement from the stewards.

21 MR. LAWS: Mr. Commissioner, with your
22 permission, could I ask a couple of questions of
23 Frank that might be helpful?

24 CHAIRMAN VAN CLIEF: Yes.

25 MR. LAWS: Frank, I think I have two questions

1 for you.

2 MR. PETRAMALO: Yes.

3 MR. LAWS: Regarding argument number two, you
4 referred to 11 Virginia administrative code
5 10-140-220, third party interference.

6 MR. PETRAMALO: Yes.

7 MR. LAWS: I noticed in that part of the code,
8 it does not contain the qualifier "during a race" as
9 opposed to the code that you cited for argument
10 number one, which begins "during a race". Do you
11 see that?

12 MR. PETRAMALO: Well, sure, but I think you've
13 got to take it in context, Josh, because the rule
14 immediately before that, 210, is interference. It
15 talks about during a race, and then the next one is
16 interference. I think you have to read them
17 together.

18 MR. LAWS: Okay. So it is your argument then
19 that the third party interference section of the
20 Virginia administrative code only applies during a
21 race or is it also pre-race?

22 MR. PETRAMALO: No. I think it applies anytime,
23 but it's difficult to think of a situation where
24 there's interference before a race that results in a
25 disqualification.

1 Over 25 years, I've probably seen hundreds of
2 flag starts. Never before have I ever seen a
3 disqualification because horses were bumping in to
4 each other trying to get in the proper position.
5 First time I've ever seen it.

6 MR. LAWS: Understood. Those are the only
7 questions I have.

8 MR. PETRAMALO: I might say it's -- turning to
9 the flat track, it's not unusual to see horses
10 bumping around or even horses in a gate where a
11 horse jumps up in the gate and kind of disturbs the
12 other horse in the next door gate. There's no
13 thought of any disqualification as long as they are
14 in the gate and they're all standing there proper
15 when the bell rings and gates open. No harm, no
16 foul.

17 Second question?

18 MR. LAWS: Those are the only two. Thank you.

19 MR. PETRAMALO: Okay.

20 CHAIRMAN VAN CLIEF: would you like to continue
21 with your presentation?

22 MR. PETRAMALO: Sure.

23 CHAIRMAN VAN CLIEF: we'll see the video and
24 then we'll ask the stewards to make their comments.
25

1 MR. PETRAMALO: Yes. I may have to call on Dave
2 to give me a hand here with this machine.

3 NOTE: Video is played in open session.

4 MR. PETRAMALO: Okay. Now, you can see the body
5 of the race is moving toward the start. You can see
6 the red flag up there, and now right in the
7 left-hand corner of the screen, you see the
8 jostling. The horse on the left is the one horse,
9 Trust Liam. The horse in the middle is Mr. Bossy
10 and the horse on the outside is Jump Ship. Jump
11 Ship is attempting to get up alongside number four,
12 who is in the middle of the screen. Not the jockey
13 with the coral, but the one immediately in front.
14 That's the four horse, so he's attempting to get
15 over there.

16 MR. LAWS: Just for clarity of the record, Trust
17 Liam is literally the horse marked number one,
18 Mr. Bossy is literally the horse marked number two,
19 and Jump Ship is literally the horse marked number
20 three.

21 MR. PETRAMALO: That's correct. Now see, here
22 is what corresponds to Tab Four. You have the
23 horses all lined up one through eleven, except Mr.
24 Bossy is in the proper position, but he's turned the
25 wrong way. The point is everything was set before

1 the start of the race. whatever occurred between
2 those three horses has been resolved and the starter
3 is there.

4 My opinion, the starter shouldn't have dropped
5 the flag until Mr. Bossy turned around, but starters
6 have a very difficult job and things happen very
7 quickly. But in this case, I think it was a
8 mistake. See, Mr. Bossy turns around and joins the
9 race.

10 COMMISSIONER MILLER: Mr. Chairman, could you
11 stop it? Is there any need to see the race?

12 MR. PETRAMALO: No. These are just --

13 COMMISSIONER MILLER: Can you go back?

14 MR. PETRAMALO: Yes.

15 COMMISSIONER MILLER: Can you reverse that tape
16 back --

17 MR. PETRAMALO: Yes.

18 COMMISSIONER MILLER: -- to the instance we're
19 supposed to be making a determination on?

20 COMMISSIONER REYNOLDS: I'd like to see it from
21 the beginning.

22 CHAIRMAN VAN CLIEF: I'd ask we go right back to
23 the beginning and watch it develop.

24 COMMISSIONER MILLER: It's only a second or two.
25 It's hard.

1 MR. LAWS: would it be helpful to see it in slow
2 motion, if possible?

3 CHAIRMAN VAN CLIEF: It would be.

4 COMMISSIONER REYNOLDS: Real time and slow
5 motion.

6 MR. PETRAMALO: I believe so. Okay. This is
7 the start and let's see if I can get it to --

8 COMMISSIONER MILLER: Right before that.

9 MR. PETRAMALO: I think I pushed the wrong
10 button.

11 COMMISSIONER MILLER: Go back to the point where
12 you said the crowd was assembling for the race. The
13 crowding of the horses.

14 MR. PETRAMALO: We want to go back to angle one.
15 We want to be able to play this in slow motion.
16 Okay. See, they're all lining up. There's six,
17 five, and four is in the middle, the dark green with
18 the red arm band.

19 Now come the three horses. Here's the two
20 horse. Jump Ship is coming across to get over to
21 the four horse, spooks that horse. Mr. Bossy comes
22 around and number one looks like he hits Bossy with
23 his butt.

24 COMMISSIONER MILLER: Mr. Chairman, would you go
25 back again and play it? I mean this happened so

1 quickly. I'm trying to see what the problem is
2 here.

3 CHAIRMAN VAN CLIEF: Frank, would you mind
4 narrating again like you just did?

5 MR. PETRAMALO: Yes.

6 CHAIRMAN VAN CLIEF: Thank you.

7 MR. PETRAMALO: Okay. See, the flag is up.
8 Okay. Now, you see the horse in the middle of the
9 screen is the five horse. Right to his left is the
10 four horse and to his right is the six horse. So
11 Mr. Bossy, excuse me, Jump Ship being the three
12 horse is trying to get on the left side of number
13 four as we're going one through eleven, left to
14 right. Now let's see if I can do this in slow
15 motion without screwing it up. Okay. Now here they
16 come. Now, here's --

17 COMMISSIONER MILLER: Stop right there a minute.
18 Number two is?

19 MR. PETRAMALO: Mr. Bossy. That's the green
20 one.

21 COMMISSIONER MILLER: Let's follow Mr. Bossy
22 along there. Now stop. I should ask your
23 permission.

24 CHAIRMAN VAN CLIEF: Please go right ahead.

25 COMMISSIONER MILLER: I'm trying to determine

1 the position of these horses, the jostler and the
2 jostlee.

3 MR. PETRAMALO: Yes. Well, first --

4 COMMISSIONER MILLER: The green --

5 MR. PETRAMALO: The green is the aggrieved
6 party, Mr. Bossy.

7 COMMISSIONER MILLER: Closer to us now coming
8 toward the aggrieved party, who is that?

9 MR. PETRAMALO: That's the one horse. That's
10 Trust Liam.

11 COMMISSIONER MILLER: Okay, and our culprit.

12 MR. PETRAMALO: Alleged culprit. Alleged
13 culprit.

14 COMMISSIONER MILLER: Alleged culprit.

15 MR. PETRAMALO: Is on the left.

16 COMMISSIONER MILLER: Is on the left but in the
17 middle as we come to the left.

18 CHAIRMAN VAN CLIEF: In the rose-colored silk.

19 MR. PETRAMALO: No. No. No. I'm sorry. It's
20 red.

21 COMMISSIONER MILLER: I don't know what it is.

22 MR. PETRAMALO: You've got the three horses, and
23 if you look at it, it's three, two, one as they're
24 approaching the start.

25 COMMISSIONER MILLER: I know, but I'm looking

1 three-dimensionally. The horse that is closest to
2 us as I look at the screen, can we agree that is
3 number one?

4 MR. PETRAMALO: That's correct.

5 COMMISSIONER MILLER: Can we agree that the next
6 horse closest to us is number two?

7 MR. PETRAMALO: Correct.

8 COMMISSIONER MILLER: And then the alleged --
9 the appellate --

10 MR. PETRAMALO: Jump Ship.

11 COMMISSIONER MILLER: -- is beyond number two.

12 MR. PETRAMALO: Right. He's number three.

13 COMMISSIONER MILLER: I'm trying to determine
14 what the jostle was and how it took place.

15 MR. PETRAMALO: Well, you'll see it in the next
16 frame.

17 COMMISSIONER MILLER: Okay. Go very slow. Stop
18 right there. Have they run in to each other?

19 MR. PETRAMALO: Not at that --

20 COMMISSIONER MILLER: Okay. Keep going.

21 MR. PETRAMALO: And to be quite honest, it's not
22 clear that they actually hit.

23 COMMISSIONER MILLER: Well, that's what I'm
24 trying --

25 MR. PETRAMALO: There's no doubt in my mind that

1 the two horse was spooked or shied away when the
2 three horse came running alongside.

3 COMMISSIONER REYNOLDS: Can I ask a quick
4 question? You have two guys holding flags there.
5 Is one guy the official guy or do they drop at the
6 same time?

7 MR. PETRAMALO: Yeah. The jockeys are watching
8 the furthestmost guy. They have the -- the actual
9 starter is on the left, the shorter fellow behind
10 the five horse, and when he drops the flag the lead
11 guy drops the flag. So the jockeys are lined up
12 here, the starter is looking to make sure the horses
13 are where they belong, he drops the flag, the guy in
14 front drops the flag and off we go.

15 COMMISSIONER REYNOLDS: So we should be looking
16 at the first guy's flag? He's the official?

17 MR. PETRAMALO: Yes. He's the official starter.

18 CHAIRMAN VAN CLIEF: Mr. Miller.

19 COMMISSIONER MILLER: Mr. Petramalo, the horses
20 line up numerically.

21 MR. PETRAMALO: Yes.

22 COMMISSIONER MILLER: Supposed to.

23 MR. PETRAMALO: Yes.

24 COMMISSIONER MILLER: At this point, what I see
25 is number one is pulling up to make sure number one

1 gets in the number one position.

2 MR. PETRAMALO: Right. As you look at it.

3 COMMISSIONER MILLER: Number two has to be next
4 to number one eventually.

5 MR. PETRAMALO: Has to be on the side of number
6 one.

7 COMMISSIONER MILLER: And number three has to go
8 across an amount of ground to get over to number
9 four.

10 MR. PETRAMALO: Yes.

11 COMMISSIONER MILLER: Correct?

12 MR. PETRAMALO: Correct.

13 COMMISSIONER MILLER: So number three is
14 proceeding to go where number three needs to go; is
15 that right?

16 MR. PETRAMALO: Yes.

17 COMMISSIONER MILLER: Okay. Let me ask you a
18 question about right of way. I mean you may scoff
19 at that.

20 MR. PETRAMALO: No.

21 COMMISSIONER MILLER: I mean it appears to me --
22 I mean correct me if I'm wrong, somebody. It
23 appears to me that number three has the right of way
24 to come across whatever amount of ground that is to
25 get over to the appropriate starting position.

1 MR. PETRAMALO: Well, it's clear that that's
2 what he's attempting to do.

3 COMMISSIONER MILLER: Okay. Now --

4 MR. PETRAMALO: What we say --

5 COMMISSIONER MILLER: Okay.

6 MR. PETRAMALO: -- is two shouldn't have been
7 there. He's in the wrong position.

8 COMMISSIONER MILLER: I'm not going to say that.

9 MR. PETRAMALO: No. He shouldn't have been
10 there.

11 COMMISSIONER MILLER: But somebody has to tell
12 us about number two's responsibility here, and I'm
13 sure the stewards will have to tell us that.

14 MR. LERMOND: You'll see a different view of
15 this from the stewards.

16 COMMISSIONER MILLER: From a helicopter?

17 MR. LERMOND: No. It's a different camera.

18 MR. PETRAMALO: I'll show you another angle,
19 too. I think the other angle is even more
20 instructive than this is.

21 CHAIRMAN VAN CLIEF: Before we go on to that,
22 can I ask a question as well, Frank? Are there any
23 rules of the road in this situation that riders
24 would normally observe in terms of having to move
25 from point A to B to be properly positioned for a

1 start amongst themselves with crossing and moving?

2 MR. PETRAMALO: Chairman Van Clief, I honestly
3 don't know the answer to that. The point is its
4 always struck me as organized chaos when the starter
5 is trying to get all of these horses in line
6 relatively evenly so they can start. I don't know
7 whether there are rules of the road that govern.
8 You might ask Richard Boucher, but I don't know the
9 answer to that.

10 So now you see Jump Ship is going over toward
11 the four horse, and admittedly, he's cutting off the
12 number two horse. The two horse shies away. Now,
13 whether they actually hit or not, it's difficult to
14 see. It would seem to me that if they did hit and
15 it was a substantial hit, there would be more of a
16 reaction by two. But that's just my view.

17 Now watch what happens here. So two spins
18 around, and one, who should have been on the other
19 side of two, swings his hindquarters around and
20 looks as though he may be bumping two.

21 Because you'll see that -- watch there. You'll
22 see that number two now swings perpendicular to the
23 start. See? At that point when that's occurring,
24 the flag drops, and poor Mr. Bossy is pointed in the
25 wrong direction.

1 Now if we can figure out how to -- well,
2 Commissioner Reynolds asked about the two flagmen.
3 You'll see on the left-hand side of the screen the
4 starter has dropped the flag and the fellow up front
5 is in the process of also dropping the flag. So the
6 jocks know bingo it's okay to go.

7 COMMISSIONER REYNOLDS: They're all clear by
8 then.

9 COMMISSIONER MILLER: Mr. Chairman, can I ask a
10 question?

11 CHAIRMAN VAN CLIEF: Of course.

12 COMMISSIONER MILLER: What's this other view?
13 You said you would go ahead and show us the other
14 view.

15 MR. PETRAMALO: Yes. It gives you a better shot
16 of the one, two and three horse as they are
17 approaching.

18 COMMISSIONER MILLER: It's the same video, isn't
19 it?

20 MR. PETRAMALO: Same video but a different
21 camera.

22 MR. LERMOND: Angle.

23 COMMISSIONER MILLER: Okay.

24 MR. PETRAMALO: Dave, I'm getting a warning. It
25 says low battery warning.

1 MR. LERMOND: Do you want to show the other
2 angle?

3 MR. PETRAMALO: Yeah. Let's show the other
4 angle. Okay. Now this is a different camera angle.
5 You'll see the body of the race is going over across
6 the starting area, and now keep your eye on the
7 left-hand side.

8 You'll see the three horses in question come
9 into the picture. Okay. That horse you see
10 sidestepping over, that's number one, and the horse
11 coming into your picture with the green silks,
12 that's number two, and far left is Jump Ship, number
13 three.

14 So you've got all three of those horses
15 approaching the main body. Now this is where I
16 contend that Mr. Bossy and his jockey were partially
17 at fault, because he's going over into the one
18 position.

19 The actual one horse is to his right. He should
20 be on the other side of the one horse as they're
21 going up to the line. And of course number three is
22 to the left and he's going to cross in front of
23 number one, trying to get to the four horse. There
24 you see the two horse shying away as three goes in
25 front.

1 COMMISSIONER MILLER: There's no way to brighten
2 up that area?

3 MR. PETRAMALO: No. Now the flag has dropped
4 and that's about it. I think the video certainly on
5 slow motion I think re-enforces the point, the two
6 points that I was making. That is, the first point
7 being that this jostling was before the race, and
8 therefore not within the ambit of the rule that says
9 during the race you get disqualified for
10 interference.

11 Secondly, the second point, this segment that
12 you just saw I think supports the point that I made.
13 That is, the two horse at least was partially at
14 fault because he was in the wrong place, impeding
15 Jump Ship from going across to get next to the four
16 horse.

17 Is there anything else that you want to see?
18 The only view that we have is of the start. There's
19 nothing else in the race.

20 But to make a long story short, all three horses
21 started behind the main body. Jump Ship makes some
22 very nice progress under a skillful ride by
23 Mr. Boucher and made one heck of a stretch run and
24 came up for second. The other horses finished back
25 in the pack and the stewards took down Jump Ship and

1 placed him last. That's all I have on the video.

2 CHAIRMAN VAN CLIEF: Any commissioners have
3 additional questions for Mr. Petramalo? I'd like to
4 ask, Frank. You contend that this didn't occur
5 during the race. Can you give me a quick definition
6 of what the rule applies to? Do you consider the
7 race to be after the flag drops and the horses are
8 off?

9 MR. PETRAMALO: Sure.

10 CHAIRMAN VAN CLIEF: Not while they are
11 positioning? In the process of starting, so to
12 speak.

13 MR. PETRAMALO: Mr. Chairman, let me analogize
14 it this way. In the flat track, here is the gate
15 and you have all kinds of things going on behind the
16 gate. None of that is during the race. The race
17 only starts when everybody is in the gate, the
18 starter rings the bell and the gates pop open. That
19 begins the race.

20 what I'm saying here is what happened here
21 before the starter dropped the flag was the same
22 thing. This is all pre-race. Normally, it gets
23 sorted out one way or the other between the horses
24 and the starters so that there's a reasonable start.
25 Sometimes they look ragged, but at least they're all

1 pointed in the right direction. Once that flag goes
2 down and a horse takes two or three strides, the
3 race begins.

4 CHAIRMAN VAN CLIEF: Thank you. Any other
5 questions? Thank you very much. Sorry that we
6 almost didn't let you go in proper order. Now we'll
7 go to the stewards. Who will be presenting the
8 stewards' case today?

9 MR. BROWN: I will. Gus Brown.

10 CHAIRMAN VAN CLIEF: Thank you very much. We
11 need to swear you in.

12 NOTE: Gus Brown is sworn under oath.

13 MR. LAWS: Can you state your name for the
14 record, please?

15 MR. BROWN: Gus Brown.

16 MR. LAWS: Could you also state what your
17 position is?

18 MR. BROWN: Steward.

19 MR. LAWS: For the Virginia Racing Commission?

20 MR. BROWN: Yes. For the Virginia Racing
21 Commission.

22 MR. LAWS: Go ahead.

23 MR. BROWN: Thank you very much for having us
24 today. So the issue that we have, we had a
25 situation at the start of this race where we had

1 contact that we contend happened during the running
2 of the race. We had a horse that was having issues
3 in the starting box.

4 The starting box, as you will see when we watch
5 the video, and if you notice during the video with a
6 steeple chase start, we use what's called the box
7 and we use a set of cones, four cones, to lay out
8 the box.

9 The horses are typically set up in numerical
10 order. They are brought into the box, and once
11 they're in the box, they're given direction from the
12 starter to come across, turn and face up the race
13 course, and they're being given verbal orders as
14 well as using the flag. At that point, the starter
15 will tell them they're okay to go.

16 In this particular case, Jump Ship actually asks
17 for permission to come in last because they were
18 having issues with the horse. As you saw in the
19 video, Jump Ship started off coming in last and then
20 accelerated through the field into the box, made
21 contact with Mr. Bossy, spun Mr. Bossy around
22 backwards at the same time that the starter was
23 releasing the field.

24 As Mr. Petramalo did acknowledge, it is a bit of
25 controlled chaos, but there is a procure and there

1 is an order, and the starting box as we have it, I
2 would consider very much like a starting gate, where
3 once the gate opens, that is the start of the race.

4 They're in the box and the starter has the
5 ability to let them go at any point in the box. It
6 could be in the back of the box, it could be in the
7 front of the box. He has to determine when is the
8 best chance.

9 And the start while the flag is up and the flag
10 is dropped, that is an indication as much for the
11 timer and the announcer of when the race starts as
12 it is for the rider. The voice commands are
13 actually more important for the riders than the flag
14 because many of the riders can't see the starter
15 based on where he is on the racecourse to them.

16 So in this particular case, this horse was
17 coming in -- had been given permission to come in
18 late because of his difficulties.

19 If you look at the stewards' report, Mr.
20 Petramalo actually referred to it where he talked
21 about the accidental interference. That in fact, we
22 were very specific in writing that report that way.
23 Mr. Boucher came up and gave testimony. We spoke
24 with each rider and the starter. We posted an
25 inquiry at the very beginning of the race as soon as

1 the event happened and called the starter up
2 immediately after the race, so he didn't even have
3 time to report to us.

4 In Mr. Boucher's testimony, he did in fact
5 acknowledge that he had made contact with that horse
6 at the start of the race and spun the horse around.

7 In writing the report, the accidental
8 interference was based on three different criteria
9 for riders; was it accidental, was it careless or
10 was it reckless.

11 It was clearly accidental because Mr. Boucher
12 was doing everything within his power to stop it
13 from happening, but it still happened nonetheless,
14 so it was not something he caused carelessly. It
15 was not something that he caused recklessly. It was
16 something, however, that happened during the running
17 of the race. I would like to show you a video here
18 a little bit.

19 So as you see here in this gap that's forming,
20 just to the right of the three horses in question,
21 there is that orange spot. That is one of the cones
22 that create the box. There's another just further
23 down the racecourse behind the starter, Graham
24 Alcott. That's what creates this box and I want --
25 sorry. We're getting a low battery signal here.

1 That's what creates this box that we're
2 referring to, and that's very important for this
3 part of the conversation because that box is -- they
4 are under starter's orders when they are circling
5 prior to the race, which we will see in the next
6 video, but it's very important to realize once
7 they're in the box, they are on the racecourse and
8 it is a part and function of the race.

9 So there from that angle, Jump Ship came in from
10 behind the field where he had originally been and
11 rushed across and made contact with the horse and
12 then tried to get into what would have been his
13 typical starting position. So all of those events
14 happened very quickly right at the start of the
15 race. They all happened sequentially as they turned
16 and as Mr. Mr. Alcott released them.

17 COMMISSIONER REYNOLDS: Mr. Chairman, may I ask
18 a question or do you want me to wait until he's
19 finished?

20 CHAIRMAN VAN CLIEF: Please go ahead and ask
21 your question.

22 COMMISSIONER REYNOLDS: I wanted to ask you. In
23 that last one, it looked like obviously three did
24 perhaps trying to get their spot, jostled a bit, but
25 it also looked like that he was clear and it looked

1 like the number one horse, Trust Liam, may have also
2 contributed to turning the number two horse around.

3 Did the number one horse have any contribution
4 to having the number two turn totally around? I saw
5 what the three did. It looked to me like the one
6 may have also contributed to turning the two horse.

7 MR. BROWN: The number one may have turned the
8 two horse around, but that may have been a secondary
9 result by the fact that the three had already
10 stopped the two and started to progress. Had the
11 two been allowed to continue on, that secondary
12 contact would never have happened, in our opinion.

13 COMMISSIONER REYNOLDS: Thank you.

14 COMMISSIONER MILLER: Mr. Chairman.

15 CHAIRMAN VAN CLIEF: Commissioner Miller.

16 COMMISSIONER MILLER: Mr. Brown.

17 MR. BROWN: Yes.

18 COMMISSIONER MILLER: Can you be certain that
19 those horses were in the box when this contact took
20 place? Because as I look at the screen, I can't be
21 certain. Are you certain?

22 MR. BROWN: When we go to the second video, it
23 gives us a much better definition.

24 COMMISSIONER MILLER: Okay.

25 MR. BROWN: And based on the testimony from the

1 starter as well.

2 COMMISSIONER MILLER: Is the starter here today?

3 MR. BROWN: No, sir. Now here, if you take note
4 here, so here's the one horse. He's all the way to
5 the left of the screen now. You'll notice as they
6 start. So right here at this point, to the far left
7 is Jump Ship, the appellant, who is in the process
8 of being released from the lead pony. To his right
9 is Mr. Bossy, the horse that was interfered with.

10 MR. PETRAMALO: That's the one horse.

11 MS. BOUCHER: That's the one horse.

12 MR. PETRAMALO: That's Trust Liam.

13 MR. BROWN: Sorry. You're correct. Now that is
14 Jump Ship. That is Mr. Bossy.

15 COMMISSIONER MILLER: That which one?

16 MR. BROWN: Sorry. To the far left is Jump Ship
17 in your picture. The second horse to the left is
18 Mr. Bossy.

19 CHAIRMAN VAN CLIEF: Mr. Bossy is in the green
20 silks.

21 MR. BROWN: Correct. Now they're going to enter
22 the starting box. So they're in the box there.

23 COMMISSIONER MILLER: Wait just one moment.
24 Delineate the box. Back up about one second or two
25 seconds.

1 MR. BROWN: Okay.

2 MR. PETRAMALO: We suggest you stay right there
3 because you can see the box.

4 MR. BROWN: You can see the box.

5 MR. PETRAMALO: You can see the two white cones.

6 MR. BROWN: You see the orange cone --

7 COMMISSIONER MILLER: If I could, I'm trying to
8 reach the definition of in or out of the box.

9 MR. BROWN: Okay. Let me --

10 COMMISSIONER MILLER: If those two white cones
11 are the box, are they across from each other or are
12 they --

13 MR. BROWN: You have two cones to the left of
14 your screen approximately -- I'm trying to figure
15 out the best way to describe it. Maybe three inches
16 to the left of your screen as you're looking at it.

17 COMMISSIONER MILLER: Right.

18 MR. BROWN: That is the farthest cone. That
19 would be the very end of the box. Continue along
20 the grass line to just right of center --

21 COMMISSIONER MILLER: Okay.

22 MR. BROWN: -- to just right where the horses
23 are now.

24 COMMISSIONER MILLER: Yeah.

25 MR. BROWN: That other orange spot, that is the

1 back marker for the box. That is where all the
2 horses have just turned. I'll back it up for you.

3 COMMISSIONER MILLER: Mr. Brown, is the box like
4 the tee box at a golf course? Do you determine it
5 just by two markers or four?

6 MR. BROWN: There's four.

7 COMMISSIONER MILLER: If this one is the front,
8 the one three inches to the left of the screen --

9 MR. BROWN: Correct.

10 COMMISSIONER MILLER: -- that's the front --

11 MR. BROWN: Correct.

12 COMMISSIONER MILLER: -- on one side?

13 MR. BROWN: Correct.

14 COMMISSIONER MILLER: Where's the back one for
15 that one -- on that side?

16 MR. BROWN: So the horses walk into the back
17 marker. That's the back side. I'll back it up
18 again. Right there.

19 COMMISSIONER MILLER: Right where?

20 MR. BROWN: Between -- if you look down the
21 speaker tower --

22 COMMISSIONER MILLER: Right.

23 MR. BROWN: -- it's in the very center. If you
24 look just below it to the base of it, there's the
25 orange marker.

1 COMMISSIONER MILLER: I see that.

2 MR. BROWN: That is the back marker for the back
3 side of the box.

4 COMMISSIONER MILLER: Back side?

5 MR. BROWN: If you imagine four cones, two at
6 the bottom and two at the top, the horses would walk
7 in the bottom and they would turn and walk up the
8 racecourse.

9 COMMISSIONER MILLER: So this is the bottom of
10 the box.

11 MR. BROWN: This is the bottom of the box.
12 They're walking --

13 COMMISSIONER MILLER: Okay.

14 MR. BROWN: -- correct. They're walking in to
15 that.

16 COMMISSIONER MILLER: Now to get in the box, the
17 horses would have to go around there and go between
18 that box and the box to the left of the screen; is
19 that right?

20 MR. BROWN: well, they walk in to that cone and
21 then they turn and they walk towards the one to the
22 left-hand side of the screen.

23 COMMISSIONER MILLER: Right. To be in the box.

24 MR. BROWN: To be in the box.

25 COMMISSIONER MILLER: As I look at the screen,

1 they have to get to the left of the marker that I
2 see at the bottom of the speaker box.

3 MR. BROWN: Correct.

4 COMMISSIONER MILLER: Okay.

5 MR. BROWN: So they are all walking in there.
6 So the horses, the outside horses, the high-number
7 horses, they are already in.

8 COMMISSIONER MILLER: Yeah.

9 MR. BROWN: It's the last few horses that are
10 trying to get there now at this point.

11 COMMISSIONER MILLER: Right.

12 MR. BROWN: So I'll play it one time at regular
13 speed. Actually, let me back it up just a little
14 bit. So right now, the high-number horses are
15 walking across the back of the box. The low-number
16 horses are coming in and contact.

17 COMMISSIONER MILLER: Stop right there. Stop
18 right there. I hate to be so energetic. This is
19 exciting. Right now, I see a bunch of horses to the
20 right of the box.

21 MR. BROWN: Correct. They're in the back of the
22 box at that point.

23 COMMISSIONER MILLER: Wait a minute. You keep
24 saying in the back of a box. I want to find out
25 where they're in the box. There's a difference

1 between being in the box and back of the box.

2 MR. BROWN: Right.

3 COMMISSIONER MILLER: If they're at the back of
4 the box, they're not in the box.

5 MR. BROWN: Sorry. I'm using I guess a jockey's
6 term or a horseman's term in reference to the bottom
7 of the box, the back of the box, the end of the box.
8 If you imagine sort of a rectangle --

9 CHAIRMAN VAN CLIEF: Mr. Brown, would you mind
10 walking over here and trace the box on our screen?

11 MR. BROWN: Sorry.

12 COMMISSIONER MILLER: I understand where the
13 back of the box is; it's right there. The front of
14 the box is right there; am I not correct? That's
15 the front of the box and this is the back of the
16 box, right?

17 MR. BROWN: Yeah. If you imagine your screen,
18 your whole screen --

19 COMMISSIONER MILLER: I'm not imagining it.
20 It's right there. I see it.

21 MR. BROWN: This is the box. Imagine your
22 screen is the whole box.

23 COMMISSIONER MILLER: No, look there. There's
24 the box.

25 MR. BROWN: This is the front. There's another

1 cone on the outside rail.

2 COMMISSIONER MILLER: This is the box.

3 MR. BROWN: This is the front.

4 COMMISSIONER MILLER: Here to here.

5 MR. BROWN: This is the front. This is the
6 back.

7 COMMISSIONER MILLER: Right. That's what I'm
8 getting at.

9 MR. PETRAMALO: That's one side of the
10 rectangle.

11 MR. BROWN: Right.

12 COMMISSIONER MILLER: Right. So the other side
13 of the rectangle, I assume, is directly across the
14 track from this one and the other side of the front
15 is directly across the track from this one.

16 MR. BROWN: Right. This runs to the outside
17 rail and this runs to the outside rail.

18 COMMISSIONER MILLER: Okay. Does it go like
19 this?

20 MR. BROWN: Yes. So the horses are walking that
21 way to the outside rail.

22 COMMISSIONER MILLER: So it doesn't go straight
23 across?

24 MR. BROWN: No.

25 COMMISSIONER MILLER: So the box is an obtuse

1 rectangle. Look here.

2 MR. BROWN: If the racetrack runs this way, the
3 box would be like this. You'd have a cone here, a
4 cone here, a cone here, a cone here, and the horses
5 would walk in this way and then they'd turn and go
6 this way. That's what they're doing.

7 COMMISSIONER MILLER: To get in the box.

8 MR. BROWN: To get in the box. This would be
9 the back of the box --

10 COMMISSIONER MILLER: So they're coming in
11 here --

12 MR. BROWN: And this would be the front of the
13 box.

14 COMMISSIONER MILLER: Mr. Brown, these horses
15 right here --

16 MR. BROWN: Correct.

17 COMMISSIONER MILLER: -- they have to turn
18 around this way and then go forward to get in the
19 box.

20 MR. BROWN: Correct.

21 COMMISSIONER MILLER: Here's the box from here
22 to here, and right now they're in the back of the
23 box.

24 MR. BROWN: Those two cones are these two cones.

25 COMMISSIONER MILLER: Correct.

1 MR. BROWN: Yep.

2 COMMISSIONER MILLER: So right now, they're not
3 in the box. They're headed toward the box.

4 MR. BROWN: Everybody's in the box. Everybody's
5 in this area except for the horse that just wheeled
6 out.

7 COMMISSIONER MILLER: It would be nice if I
8 could see where the other side -- I mean you're
9 saying it's back here somewhere.

10 MR. BROWN: He had it all the way against the
11 outside fence, the outside rail.

12 COMMISSIONER MILLER: So we're not looking
13 square at the track.

14 MR. BROWN: No. You're looking at it from an
15 angle. You're looking at it from over here.

16 CHAIRMAN VAN CLIEF: You're looking at the box
17 obliquely from behind.

18 COMMISSIONER MILLER: Here's the box as it's on
19 the screen and here we are. Is that what you're
20 saying?

21 MR. BROWN: If the horses are running this way
22 --

23 COMMISSIONER MILLER: No. The horses are going
24 to go back that way.

25 MR. BROWN: Yes. Correct. You're correct.

1 COMMISSIONER MILLER: You're saying -- so I must
2 be right here --

3 MR. BROWN: Correct.

4 COMMISSIONER MILLER: -- because I'm seeing a
5 bunch of horses that look to me like they're right
6 here.

7 MR. BROWN: Correct.

8 COMMISSIONER MILLER: You're saying they're up
9 here.

10 MR. BROWN: Correct.

11 CHAIRMAN VAN CLIEF: Maybe this would help. Do
12 either party, the appellate or the stewards, contest
13 the horses were in the box at the time Mr. Brown
14 says they are?

15 MR. PETRAMALO: Yes. I don't agree with that at
16 all.

17 COMMISSIONER MILLER: I understood the
18 presentation by the appellant was that they were
19 jostled as they were headed toward the box and were
20 trying to reach the box to line up appropriately in
21 the box --

22 MR. LAWS: Can the crowd keep it down for the
23 court reporter?

24 MR. PETRAMALO: I don't think that's where the
25 disagreement is at, that the jostling of the three

1 horses occurred as they were going to the box. They
2 weren't in the box.

3 MR. BROWN: We disagree. We say they were --
4 the contact happened when they went into the box.

5 COMMISSIONER MILLER: Okay.

6 CHAIRMAN VAN CLIEF: Okay. Let's go back to
7 Mr. Brown's presentation.

8 MR. LAWS: The commissioners will have an
9 opportunity to question both sides about that before
10 the hearing is over.

11 COMMISSIONER MILLER: Mr. Commissioner, will we
12 have an opportunity to question the starter and the
13 other jockey?

14 MR. LAWS: Unfortunately, Commissioner, the
15 answer is no and the reason the answer is no is
16 under the Virginia administrative code 11 VAC
17 10-90-50, reviews of stewards' decisions involving
18 the outcome of a race or a riding slash driving
19 infraction shall be conducted on the record of the
20 stewards' proceedings. And the code goes on to say
21 that no witnesses will be called, only argument and
22 comment from the parties.

23 So Commissioner Miller --

24 COMMISSIONER MILLER: Okay. That's all right.
25 I'm comfortable with that.

1 MR. LAWS: The factual record, if you will, it's
2 found in Exhibit Number One on page three dash four.
3 That's what Mr. Petramalo referred to in his
4 argument where he referred to the accidental
5 interference.

6 That is something that the Commission has found
7 in their record and that's why that's something
8 Frank can argue or comment about, because that's
9 part of the stewards' record.

10 I'll take this opportunity to point out Exhibit
11 Number One is actually nine pages. There is a small
12 chronological error, so the beginning of the
13 stewards' factual record is the bottom of page three
14 and continues onto page four.

15 CHAIRMAN VAN CLIEF: Thank you. Mr. Brown, do
16 you want to go ahead? Thanks for your explanation
17 over here.

18 MR. BROWN: We're finished.

19 COMMISSIONER MILLER: Finished.

20 CHAIRMAN VAN CLIEF: Okay.

21 MR. LAWS: At this point, Mr. Chairman, before
22 you ask any questions, the drawing that Mr. Brown
23 made I'd like to mark as Exhibit Three and put that
24 into the record so the parties can all argue about
25 the same graphic.

1 COMMISSIONER MILLER: Mr. Chairman, can I ask a
2 question of Mr. Brown before he retires? I know
3 he's --

4 As a steward, I'm trying to find something
5 analogous to this. In a situation Mr. Petramalo
6 talks about in the normal races where you have a
7 gate, the horses get in the gate and the race starts
8 once that gate opens. So naturally, anything that
9 occurs after that would be subject some
10 interpretation by the judges of the race to
11 determine whether or not something interfered with a
12 race or not.

13 But in a case where you have a race using a
14 gate, is there anything a steward would look at
15 regarding the horses lining up to go in the gate
16 that might interfere that might have some subsequent
17 effect on the race that might call for
18 disqualification? I just -- I don't know. I'm just
19 asking.

20 In other words, these Thoroughbreds are trying
21 to get them in the gate. Maybe a horse bumps
22 another horse before it goes in the gate and maybe
23 gets a horse disoriented or something or upset.
24 Would a steward look at something like that also?

25 MR. BROWN: Prior to the race?

1 COMMISSIONER MILLER: Yeah. Is there any
2 instance of that? Because I was looking at this
3 regulation that counsel pointed out about
4 interference. It said that the one regulation does
5 not say anything about during a race; third party
6 interference. Can you have third party interference
7 before the race starts that may affect the race and
8 call for you to readjust the finish?

9 MR. BROWN: Well, for us because we don't have a
10 starting gate --

11 COMMISSIONER MILLER: No. I'm trying to
12 determine -- I'm trying to find a comparison.

13 MR. BROWN: A comparison. So our similarity
14 would be they are in the hands of the starter and
15 they are under the control of the starter. So they
16 are put in, as Mr. Petramalo stated, they are put in
17 a numerical order. In this particular case, he was
18 given permission to go in a different position
19 because of the difficulty he was having.

20 COMMISSIONER MILLER: Okay. Despite, if I may,
21 despite the fact that you all have a disagreement
22 about when the race -- when the -- when they were
23 participating in the race, is it fair to say that if
24 this -- if the interpretation would be that this
25 occurred, this bumping and all this messing around

1 occurred before the race began, not during the race,
2 there's nothing you would do about it as a steward?
3 There might be things -- owners and jockeys and
4 trainers might sue because of things that happened
5 before the race.

6 what I'm getting at is if something happened, if
7 it truly happened before the race and it wasn't
8 during the race, you would not have anything to do
9 with it? There would be nothing you could do about
10 it, correct?

11 MR. BROWN: Well, I don't know that you could
12 use that comparison because with a gate, you could
13 have --

14 COMMISSIONER MILLER: No. No. No. No. No.
15 I'm wasting time. I'm trying to -- your only
16 authority is during the race.

17 MR. BROWN: Right.

18 COMMISSIONER MILLER: Nothing that occurred
19 before the race --

20 MR. BROWN: Right.

21 COMMISSIONER MILLER: -- as to the outcome of
22 the race; is that correct? That's what I'm getting
23 at.

24 MR. BROWN: Right. We consider -- we
25 consider --

1 COMMISSIONER MILLER: I know what you consider.

2 MR. BROWN: Right.

3 COMMISSIONER MILLER: But if it didn't occur
4 during the race --

5 MR. BROWN: Right.

6 COMMISSIONER MILLER: -- there's nothing that
7 you could do about it; is that correct, as far as
8 the outcome of the race is concerned?

9 MR. BROWN: We don't think so, because if that
10 was the case, then anybody could do anything at any
11 time at the start and you could knock a rider off.
12 You could do anything and it would be considered
13 fair game and then --

14 COMMISSIONER MILLER: If it occurred during the
15 race. But if it occurred before the race.

16 MR. BROWN: I think that's what you're asking
17 me.

18 COMMISSIONER MILLER: Yeah. If it occurred
19 before the race. If something occurred -- if
20 something awful occurred before the race started --

21 MR. BROWN: Right.

22 COMMISSIONER MILLER: -- something terrible,
23 doesn't matter what it is, is there anything you can
24 do about it?

25 MR. BROWN: Yes.

1 COMMISSIONER MILLER: What?

2 MR. BROWN: Exactly what we just did. There was
3 interference. We contend that it happened during
4 the starting process.

5 COMMISSIONER MILLER: I know that you contend
6 that this is during the race. That's what you're
7 contending, correct?

8 MR. BROWN: Yes.

9 COMMISSIONER MILLER: But if it occurred before
10 the race, you could -- there might be something you
11 could do. I don't know, but there's nothing you can
12 do regarding the outcome of the race, moving number
13 one to number two or disqualifying someone if it
14 occurred before the race. That's the only point I'm
15 trying to get to.

16 MR. BROWN: Right.

17 COMMISSIONER MILLER: Concede for a moment this
18 did not occur during the race. If this did not --
19 if we were to determine that this did not occur
20 during the race, then the stewards could not adjust
21 the finish or change the finish, change the outcome
22 or penalize anybody for what occurred in the race;
23 is that correct? That's all I'm trying to get to.

24 MR. LAWS: Mr. Miller, I understand the point
25 you're making. Can I try?

1 COMMISSIONER MILLER: Yeah.

2 MR. LAWS: Thank you. Mr. Brown, without
3 accepting Mr. Petramalo's definition of when a race
4 begins, if an infraction happens before the race
5 begins, does the Commission have jurisdiction to
6 change the outcome of that race or is it without
7 power to change the outcome of that race, if the
8 infraction happened prior to the race beginning?

9 COMMISSIONER MILLER: That's what I thought I
10 asked, but didn't ask it very artfully. I wasn't a
11 good lawyer.

12 MR. LAWS: If you don't know the answer, that's
13 fine, but if you do know the answer, we'd like you
14 to answer.

15 MR. BROWN: I believe we have jurisdiction.
16 Yes.

17 MR. LAWS: Do you know where in the Virginia
18 administrative code or the code of Virginia it
19 allows the stewards to issue a ruling on a pre-race
20 infraction?

21 MR. BROWN: I would have to --

22 MR. LAWS: I'm sorry. What's that?

23 MR. BROWN: I would have to get back to you on
24 that.

25 COMMISSIONER MILLER: Well, can I ask counsel?

1 MR. LAWS: Sure.

2 COMMISSIONER MILLER: I'm trying to reach --
3 because obviously something occurred. I'm just
4 trying to determine what is in our power to do.

5 MR. LAWS: Sure.

6 COMMISSIONER MILLER: So something did occur.
7 If we were to determine that it occurred before the
8 race began, is there anything -- that's what I want
9 to get to. Is there something we can do about it?

10 MR. LAWS: From my perspective after reviewing
11 the code and the Virginia administrative code, the
12 answer is yes. I think this is where Frank and I
13 disagree.

14 My understanding of third party interference,
15 11 Virginia administrative code 10-140-220, if a
16 horse or jockey interferes with or goes on, it does
17 not say during a race or during a race meeting, as
18 opposed to the Virginia administrative code section
19 right before, where that code section begins during
20 a race, comma, no jockey shall.

21 So it is my opinion and my legal opinion for the
22 Commission that third party interference, Virginia
23 administrative code section, does not have the
24 qualifier during a race, so therefore, that gives
25 you jurisdiction and the stewards jurisdiction to

1 rule.

2 COMMISSIONER MILLER: Next question. I hate to
3 take all this time because I know we've got a full
4 day, but this is an important case for them. It's
5 an important case for the stewards. It's a very
6 important case.

7 If something -- if this interference does occur
8 prior to the race, as you say, and not during the
9 race, what is the remedy? What is it appropriate
10 for the Commission through the action of the
11 stewards to penalize them -- the outcome, to change
12 the outcome of a race for something that occurred
13 before the race?

14 MR. LAWS: Yes. The Commission has that
15 authority, as does the stewards if that occurs, that
16 chain of events occurs as you describe, then the
17 stewards and the Commission have the authority under
18 the Virginia administrative code and the code of
19 Virginia to alter the outcome of the race.

20 COMMISSIONER MILLER: Okay.

21 MR. LAWS: That's my conclusion. Frank has
22 argued and would say that because in his opinion,
23 different from mine, that it didn't happen during
24 the race, the stewards and the Commission do not
25 have the authority to change the outcome.

1 COMMISSIONER MILLER: All right.

2 MR. PETRAMALO: I certainly disagreed with Josh.
3 Just carry that to its logical conclusion.
4 Commissioner Miller's question was does the
5 Commission have jurisdiction or the right to alter
6 the outcome of a race that's been run based on
7 something that happened before the race.

8 COMMISSIONER MILLER: That's right.

9 MR. PETRAMALO: The answer to that is absolutely
10 not. For example, let me give you an example. You
11 read on here in the stewards' report. I forget what
12 race it was in. The eighth race, the ninth race.
13 There was some shenanigans before the race in the
14 paddock where the stewards took action and scratched
15 a horse and severely disciplined a jockey. You can
16 do that, but you can't do anything that affects the
17 outcome of the race based on something that happened
18 down the street.

19 Now Mr. Brown has argued, well, something is
20 sacred about the box. The box is the same as the
21 starting gate; no two ways about it. He said that
22 at the outset and then he kind of backed off that.

23 But it's the starting gate, and what happens in
24 the starting gate is under the control of the
25 starter. He can tell them what to do, et cetera,

1 whether it's the gate or whether it's the box. But
2 the race doesn't start until the horses are released
3 by the electric gate or the starter drops the flag.

4 I mean Mr. Brown was kind of insinuating that
5 really maybe the starter can start the race with an
6 oral command. Respectfully, that's balderdash. The
7 race doesn't start until the flag drops. Everybody
8 knows that. It has nothing to do with the
9 convenience of the timer for the video people.
10 That's the start of the race.

11 MR. LAWS: Commission, if Mr. Brown is done with
12 his presentation, we'll give Frank the opportunity
13 to give his response. I try to keep it procedurally
14 correct.

15 I think the Commission would agree and Frank
16 would agree as well regarding something that happens
17 before the race and then changing the outcome of the
18 race.

19 If blood is drawn from a horse and they test
20 positive for a drug that was in the system of the
21 horse, a foreign substance prior to the race and
22 that test does not come back until after the race,
23 the Commission and stewards have the authority to
24 alter the outcome of that race. So there are
25 instances in the code and in the Virginia

1 administrative code where the Commission does have
2 that authority.

3 Frank, when you have the opportunity, you can
4 respond to that, I'm sure.

5 MR. PETRAMALO: I'll agree to that because the
6 code specifically provides that if there's a
7 positive drug test, then the stewards have got the
8 right to disqualify that horse. No doubt about
9 that. That's in the code. But there's nothing in
10 the code about this thing that we're talking about
11 now.

12 MR. LAWS: Before we move on to Frank's
13 continued response, I want to make sure that we
14 introduce Exhibit Three into the record properly.
15 So Exhibit Three has been marked and it's the
16 drawing that Mr. Brown made and Frank observed and
17 was used by the Commission in trying to understand
18 the dimensions of the box, and if a commissioner
19 would like to make a motion to introduce that into
20 the record.

21 CHAIRMAN VAN CLIEF: I'll so move it.

22 COMMISSIONER MILLER: Second.

23 CHAIRMAN VAN CLIEF: Any opposed?

24 NOTE: There was no response.

25 CHAIRMAN VAN CLIEF: Thank you.

1 MR. LAWS: That's Exhibit Three.

2 CHAIRMAN VAN CLIEF: Do any commissioners have
3 additional questions for Mr. Brown?

4 NOTE: There was no response.

5 CHAIRMAN VAN CLIEF: Thank you very much. At
6 this point then, Mr. Petramalo has the privilege of
7 responding.

8 MR. PETRAMALO: Just a quick summary. At the
9 outset, I said there were three independent grounds
10 for overturning the stewards' decision. We focused
11 a lot on number one, whether or not this was during
12 the race.

13 For the reasons that I've stated before, it
14 wasn't during the race, but let's set that aside.
15 Let's focus on number two, and that is whether there
16 was partial fault on behalf of number two, Mr. Bossy
17 and his jockey.

18 I don't think there's any doubt about that. The
19 stewards haven't addressed that. As a matter of
20 fact, they just kind of blindly ignore it, but
21 that's an important point. The rule specifically
22 says if somebody else is partially at fault, the
23 stewards can't disqualify the horse that has
24 finished second.

25 Finally, what I call the equity argument. That

1 is the penalty here was far in excess of what was
2 justified by the conduct here. The stewards agree
3 or admit that this was accidental, and for that
4 reason, there are other remedies available to them.

5 I suggested the horse might have been put on the
6 stewards' list, a letter of caution or warning to
7 the owner, et cetera. There are other remedies that
8 the stewards have besides the death penalty. In
9 this case, it was certainly not appropriate.

10 COMMISSIONER REYNOLDS: Mr. Chairman, may I ask
11 Mr. Petramalo a question?

12 CHAIRMAN VAN CLIEF: Yes, sir.

13 COMMISSIONER REYNOLDS: Mr. Petramalo, typically
14 when a horse gets disqualified and typically from
15 what I understand, the horse is usually placed
16 behind the aggrieved horse and that's what happened
17 here. Are there other remedies? Is the only
18 opportunity to put them, I guess it was tenth behind
19 the two horse who finished ninth or can the stewards
20 place him wherever they want?

21 MR. PETRAMALO: I think, Commissioner Reynolds,
22 it depends on the nature of the interference of the
23 violation. If it was somewhere in the actual
24 running of the race as opposed to before the race,
25 the horse may have finished third and placed fifth.

1 Doesn't necessarily mean because of interference
2 that he goes to the back of the pack.

3 COMMISSIONER REYNOLDS: But I think what they
4 probably did was put him in the back behind the
5 horse that was allegedly aggrieved.

6 MR. PETRAMALO: Yes. That's correct.

7 COMMISSIONER REYNOLDS: Okay. Thank you,
8 Mr. Chairman.

9 MR. PETRAMALO: Yeah. I think there's something
10 also worth noting. The stewards after the race
11 declared Mr. Bossy a nonstarter and ordered a refund
12 of all the wagering that was on him. But
13 nonetheless under the rules, if Mr. Bossy had
14 finished third, even though he was a nonstarter, he
15 would have collected third place winner.

16 CHAIRMAN VAN CLIEF: Any other questions?

17 NOTE: There was no response.

18 CHAIRMAN VAN CLIEF: In that case, it would be
19 appropriate at this point for me to ask my fellow
20 commissioners if anybody would like to make a motion
21 to either uphold or reverse the stewards' ruling,
22 after which we can take some more time for
23 discussion if you like. Your other option, of
24 course, would be to modify the ruling.

25 COMMISSIONER STEGER: Mr. Chairman, I have been

1 operating under the understanding of what I believe;
2 that the race doesn't start until the horses are
3 released by the starter, and given I have seen a few
4 of these races, it's always a bit chaotic.

5 There was some interference which occurred and
6 leads me to conclude that the penalty exceeds the
7 crime. There was no intent, in my opinion, to cause
8 a problem, but --

9 CHAIRMAN VAN CLIEF: Any other comments?

10 COMMISSIONER REYNOLDS: I agree with
11 Commissioner Steger.

12 CHAIRMAN VAN CLIEF: Commissioner Miller,
13 anything further?

14 COMMISSIONER MILLER: Well, what would be the
15 penalty if the punishment exceeds the infraction?
16 What would be, if any, an appropriate reprimand? I
17 would ask counsel.

18 CHAIRMAN VAN CLIEF: I would ask counsel as
19 well. What are the guidelines if we care to amend
20 the ruling? I think the sentiment is that given
21 that by all accounts the infraction was accidental
22 and during a chaotic part of the either the race or
23 pre-race, depending on how you look at it, we might
24 give some consideration to amending that ruling,
25 particularly the penalty.

1 MR. LAWS: I apologize, Commissioner. I don't
2 know the answer off the top of my head. Let me look
3 up the proper Virginia administrative code, unless
4 Mr. Lermond knows that cite, or Frank, if you know
5 that cite off the top of your head; the authority of
6 the stewards and therefore the authority of the
7 Commission for what the penalty should be.

8 COMMISSIONER MILLER: May I?

9 CHAIRMAN VAN CLIEF: Commissioner Miller.

10 COMMISSIONER MILLER: May I make a suggestion
11 that we take this case under advisement, and at the
12 end of our docket we sometime today before we leave
13 the building, we can return and readdress it after
14 we've secured some more information regarding the
15 legal basis for anything that we might want to do?

16 CHAIRMAN VAN CLIEF: Let me look to counsel
17 again. The sequence of events as we intend them
18 today will take us through the main body of the
19 agenda, at which point we are either going to recess
20 or adjourn and then reconvene in closed session for
21 the purpose of hopefully moving forward with our
22 executive search. At some point in that process,
23 may we also in the closed session address these
24 issues?

25 MR. LAWS: Not in the closed session.

1 COMMISSIONER MILLER: Mr. Chairman, I believe it
2 would be appropriate to have a closed session to get
3 legal advice from our counselors to what possible
4 remedies might apply.

5 MR. LAWS: That's correct.

6 COMMISSIONER MILLER: That's what I want to get
7 to. We can't do it out here.

8 MR. LAWS: No discussion of the case in the
9 closed session.

10 MR. PETRAMALO: I'd like to be able to find you
11 a citation here in about a minute.

12 COMMISSIONER MILLER: Mr. Chairman, I have to
13 feed the meter. I don't want to get into trouble.
14 I'll be right back.

15 CHAIRMAN VAN CLIEF: I'm about to ask for a
16 motion. I think the consensus is to amend, but not
17 to complete that action until we have an opportunity
18 to hear from counsel on the law. Does that suit
19 you?

20 COMMISSIONER MILLER: Yes. Thank you.

21 CHAIRMAN VAN CLIEF: I think where we are about
22 to land here is, given that my personal opinion is
23 that the stewards have every authority and that we
24 do as a Commission have jurisdiction, whether you
25 call it part of the race or preliminary to the race,

1 that the stewards have to have jurisdiction to
2 police what goes on in and around that box at the
3 time of the start, whether it's a gate or whether
4 it's a flag start.

5 But I think the consensus here seems to be that
6 given the fact that Mr. Boucher made every effort to
7 avoid the contact and not to interfere with the
8 other horse, that the stewards also acknowledge that
9 it was accidental, we don't question that there was
10 an infraction, but we do question the severity of
11 the penalty.

12 So I think we're going -- and I'll ask my fellow
13 commissioners if somebody would like to make a
14 motion along those lines that we acknowledge the
15 infraction but amend the stewards' sanction, if
16 that's where you want to go, if that's what I think
17 I'm hearing as a consensus.

18 COMMISSIONER REYNOLDS: I'll so move.

19 CHAIRMAN VAN CLIEF: So the motion then would be
20 that we amend the stewards' penalty.

21 COMMISSIONER REYNOLDS: Yes.

22 CHAIRMAN VAN CLIEF: And what we would like to
23 do is take some time to receive advice from counsel
24 on what our options are legally within that context,
25 and at that point, we will take the action.

1 MR. LAWS: So what I would recommend is the
2 motion that is on the table, pass it by temporarily
3 so you can bring the motion back at the end of this
4 meeting.

5 CHAIRMAN VAN CLIEF: Okay. So we've got the
6 motion. Then if it meets with everybody's approval,
7 we will table the motion for action at the
8 appropriate time once we receive legal advice.
9 Correct?

10 MR. LAWS: And we'll have three commissioners
11 vote and Ms. Dawson is not present.

12 CHAIRMAN VAN CLIEF: Vice Chairman Dawson is
13 recused and will not take part in any of the voting.

14 COMMISSIONER STEGER: Second.

15 CHAIRMAN VAN CLIEF: We have a second from
16 Commissioner Steger. Okay. Commissioner Reynolds.

17 COMMISSIONER REYNOLDS: Yes. Aye.

18 CHAIRMAN VAN CLIEF: Aye. I vote aye. So the
19 motion passes. We'll take it back up and complete
20 the action once we receive the appropriate advice.

21 All right. Thank you all very much for being
22 complete and for your forbearance during the course
23 of this.

24 All right. That hearing is now concluded, and
25 we will proceed to agenda item number three, which

1 is approval of our April 27 meeting minutes. Those
2 were distributed to all of you in advance
3 electronically. They are also here from the book.
4 Does anybody have any questions or modifications
5 about the minutes from our last commission meeting?
6 If not, I need a motion to approve.

7 COMMISSIONER REYNOLDS: So moved.

8 CHAIRMAN VAN CLIEF: Second, please.

9 COMMISSIONER DAWSON: Second.

10 CHAIRMAN VAN CLIEF: Thank you. Any opposed?
11 The minutes are approved. On to new business. As
12 you may recall, we spent a little time talking about
13 committee assignments and committee actions. We
14 have a couple of committee reports coming up to
15 start with, and the first of which has been a very
16 busy subject these last few weeks.

17 Commissioner Steger very kindly agreed to chair
18 our executive search committee and he's got a report
19 for us and we have a process to continue and
20 hopefully complete this afternoon.

21 COMMISSIONER STEGER: Thank you, Mr. Chairman,
22 Let me first comment on some of the procedural
23 activities that we engaged in. We coordinated the
24 activities of the search with the Department of
25 Human Resources to be sure we complied with all the

1 state regulations. We also worked closely with the
2 office of the Attorney General and the Secretary of
3 Agriculture's office, and I want to publically
4 express our appreciation to those three groups who
5 are helping us to ensure that the search follows all
6 of the procedures that are appropriate for this type
7 of position.

8 We received briefings on the appropriate
9 information for Freedom of Information Acts, as well
10 as the state regulation that was supposed to have
11 been supplied to the members of the Commission. The
12 Commission members received copies of the vitas of
13 all the applicants and the results of all the
14 advertisements being placed in the major journals
15 around the country. We've received well over sixty
16 applications at this point in time and some are
17 still coming in.

18 I want to comment that we received many
19 well-qualified applications that came from across
20 the United States. These applications have been
21 screened by all members of the Commission and the
22 interviews are going to begin very shortly and we
23 hope to complete the process as soon as possible to
24 ensure that we select the best candidate for the
25 position.

1 So the process is under way. We have a rich
2 pool of candidates and I hope that we can move
3 forward with dispatch and name the new executive
4 secretary. Thank you, sir.

5 CHAIRMAN VAN CLIEF: Thank you, Commissioner
6 Steger. I would like to just wrap that up by
7 acknowledging the tremendous amount of work that
8 Commissioner Steger has done, and also his staff at
9 Virginia Tech, which he very kindly put into action
10 on our behalf, particularly one of his management
11 team, Christine Hayman.

12 I'd like to recognize her publically. She's
13 done a fantastic job of organizing what I think has
14 become a far more voluminous body of information
15 with over sixty candidates that we ever expected it
16 would be. So thank you very much. It's a very
17 intense process.

18 The second committee we're going to hear from
19 today is chaired by our Vice Chairman, Commissioner
20 Dawson, who is our Racing Safety and Medication
21 Committee.

22 Before I call on Commissioner Dawson for a
23 report, we advised you at the last meeting that we
24 were going to take a look at this committee and that
25 we were going to update it from the standpoint of

1 its membership, so we are prepared to do that today.

2 The Safety and Medication Committee is an ad hoc
3 committee, so as chairman, I have the authority to
4 make those appointments and I will go down the list
5 and we will either appoint or reappoint as so noted
6 here today.

7 Commissioner Carol Dawson will serve as the
8 committee chair. The other commissioner to be
9 appointed is Commissioner Sarge Reynolds. Our
10 acting executive secretary, David Lermond, will
11 serve as a committee member, and the following are
12 on the committee.

13 Dr. Rich Harden, our Commission veterinarian,
14 Mr. Joe Rooney, our enforcement administrator for
15 the Commission. Dr. Reynolds Cowles. It says
16 president-elect. Is he president-elect or is he
17 currently serving, Dr. Cowles? I think he is
18 currently serving. At any rate, Dr. Reynolds Cowles
19 is a prominent veterinarian here in Virginia and
20 known to many of you in the room.

21 Dr. Rick Sams, LGC Science Laboratories, who
22 handles our testing process. Mr. Frank Petramalo in
23 his capacity as the executive director of the VHBPA.
24 Stephanie Nixon, his vice president. Mr. Brooke
25 Royster, as president of the VTA. Dr. Scott Woogen

1 in his capacity as the VHHA president, and Mr. Greg
2 Trotto, who is a member of the VHHA board. Mr. Jeb
3 Hannum in his capacity of executive director for the
4 VEA, and Dr. Al Griffin in his capacity for the
5 Virginia Gold Cup as its director of racing.

6 That group will meet under the direction of
7 Chairman Dawson, and that will occur fairly soon.
8 We've got some interesting issues that have begun to
9 bubble up and I will call on Commissioner Dawson for
10 a brief discussion and report.

11 COMMISSIONER DAWSON: Thank you so much, Mr.
12 Chairman. First of all, I want to say thank you to
13 you for moving on this matter. I know the Racing
14 Commission members consider enforcing its medication
15 rules and policy a very important part of their
16 duty.

17 I'm happy to say that this newly constituted
18 committee has some illustrious members, and although
19 it has never met yet, I'm sure that you're correct
20 there will be some issues that are likely to arise.

21 One of the issues that is likely to arise is the
22 issue of race day use of Lasix. It's a matter that
23 has been under discussion in the racing community
24 for some time now. I expect the committee will
25 study that issue as well.

1 The other thing that has risen is that an
2 individual has approached the Commission about the
3 possibility of having designated Lasix-free races
4 conducted in Virginia. The committee will of course
5 consider that.

6 Anything else that we need to examine will
7 include of course our current status of our
8 medication rules and how they stack up compared to
9 other states, and of course our medication rules and
10 data. If you will clarify this, I believe we are
11 currently under the RCI model rules and penalties
12 and they are updated periodically by reference.

13 MR. LERMOND: That's correct.

14 COMMISSIONER DAWSON: Okay. And we are also
15 part of the Mid-Atlantic Racing Association.

16 MR. LERMOND: It is now referred to as the
17 National Uniform Medication Program, which has
18 started with Mid-Atlantic tracks, but there since
19 have been other states that have joined and have met
20 the requirements that are required to join.

21 COMMISSIONER DAWSON: And finally, also want to
22 take note of the fact that there is possible federal
23 legislation in the same area. Legislation that was
24 introduced by representatives Barr of Kentucky and
25 Tonko of New York to propose federal medication

1 rules and enforcement.

2 I have to note that, you know, we've never
3 really taken a look at that. I also have to note
4 for the record that it is clear that both the
5 National Horsemen's Benevolent and Protective
6 Association have gone on record publically opposing
7 those, as well as has the Association of Racing
8 Commissioners International.

9 So it is something that's relevant and I think
10 that the committee members will want to look at all
11 sides of that. That is my report. Thank you,
12 Mr. Chairman.

13 CHAIRMAN VAN CLIEF: Thank you, Commissioner
14 Dawson, and we much appreciate you taking on these
15 somewhat controversial issues that are hot buttons
16 to say the least across the industry, and we will
17 look forward to your further reports.

18 At this point, we're going to shift to the VHBPA
19 and the VTA. I'm not sure if Mr. Petramalo or
20 Ms. Easter is going to give the -- Debbie, if you're
21 going to give the report, we need to consider some
22 approvals or requests from you with regards to the
23 owners bonus program.

24 MS. EASTER: Thank you very much, Mr. Chairman.
25 For those of you that don't know, Debbie Easter.

1 I've got on my executive director of the Virginia
2 Thoroughbred Association hat right now.

3 Before you, we have a request from the HBPA and
4 the VTA to start a new owner's program, owner's
5 bonus program for owners that own Virginia-breds and
6 win races in the Mid-Atlantic area. Let me just
7 give a little history of why this request is there.

8 Obviously, you know that I represent the
9 breeders, Frank represents the owners and trainers.
10 Without racing in this state, our constituents are
11 at a terrible disadvantage. They have no
12 opportunities at this point.

13 Also with alternative wagering in other states
14 all around us. We're the only state that doesn't
15 have that, economic incentives at a minimum for our
16 constituents.

17 The economic incentives shown around states like
18 New York and Pennsylvania are much greater for
19 people who breed horses and race horses. Our boards
20 are very concerned with the opportunities their
21 constituents have and they want to try and help them
22 in these times while we're trying to rebuild the
23 economic model and the racing model here in
24 Virginia.

25 So they came up with the idea that obviously,

1 it's not politically correct to -- hasn't been real
2 politically correct to send money out of state to
3 here in front of the Commission, but we need to come
4 up with something we can help folks with.

5 So we thought that a program that would award
6 people that own Virginia-breds that win any race in
7 the Mid-Atlantic area, and that would be New York,
8 New Jersey, West Virginia, Pennsylvania, Maryland
9 and Delaware, if those folks owned a Virginia-bred
10 and they won an overnight race, a non-stakes race in
11 those jurisdictions, that we would add a 25 percent
12 bonus on top of their purse.

13 The thought being is that not only are we
14 helping hopefully people that own Virginia-breds in
15 this area, but that we could help incentivize, make
16 Virginia-breds more attractive to, you know, help
17 the breeders that breed Virginia-breds and have them
18 more attractive in the sales ring.

19 That program would run from July 1st of this
20 year to December 31st. We have been promoting the
21 program ahead of time, only because we were
22 originally supposed to have this meeting at the
23 beginning of June; it got put off until the 21st.

24 So the thought from our boards is that we need
25 to promote this program prior to the Racing

1 Commission meeting and everything that we had to
2 promote it should say pending Virginia Racing
3 Commission approval.

4 There were two thoughts for that. One is that
5 our board members wanted to help people that have
6 Virginia-breds that were for sale at the Timonium
7 sale, that hopefully this new program would be
8 something exciting that people would be talking
9 about in the Mid-Atlantic area and that it might
10 create more buyers for those horses.

11 Number two is that a person that owns a race
12 horse doesn't make up their mind today that they're
13 going to race tomorrow. That's usually about a
14 month-long or so process, because horses generally
15 run about once every four weeks, four to eight
16 weeks.

17 So we wanted people to have quite a bit of time
18 to see this new program, say this is something I
19 might want to move my horse to this area because I'm
20 going to get a 25 percent boost on my purse if I win
21 a race.

22 Our boards are totally behind it and the money
23 actually -- normally, you all have been familiar
24 that we pay owners bonuses here in Virginia.
25 Normally, that money would come from the Breeders

1 Fund. This bonus, actually the HBPA is going to
2 step up and set aside the money to do this, only
3 because the Breeders Fund because of our situation
4 here in Virginia is maybe going to be 650 to
5 \$750,000 versus the one million to 1.2 million that
6 it normally is. So we are a little under-funded
7 right now.

8 I think it not only potentially helps breeders,
9 but it also helps owners of folks that own
10 Virginia-breds, and hopefully we're doing something
11 to try and help people that have Virginia-breds in
12 the time period that we don't have racing here in
13 Virginia. We hope that we would have your approval.

14 CHAIRMAN VAN CLIEF: Debbie, can you talk a
15 little bit about the amount of money that you plan
16 to allocate and where that comes from, how the cash
17 is going to flow to fund this program?

18 MS. EASTER: Sure. The HBPA has a fund of
19 money, obviously, as you all know, that we collect
20 revenue right now from the ADW companies that are
21 currently licensed to do business in Virginia and
22 the horsemen get a certain percentage of that money
23 for purse money.

24 They've decided, their board decided that they
25 would like to set \$500,000 aside for this program to

1 run the last six months of the year, and that what
2 will happen is that money will go in an account and
3 every day daily we get a report that -- actually, it
4 will be -- the VTA will actually administer the fund
5 just because we're used to doing that for the
6 Breeders Fund.

7 But that every day, we will watch which horses
8 win in those jurisdictions, we'll keep track of
9 that. We will try and be in touch with those
10 owners, although we're going to advertise that it's
11 the owner's responsibility to get in touch with us
12 because there is some administrative -- you have to
13 chase W-9s before we can release the money and then
14 we'll get those checks out.

15 We'll probably cut those checks once a month
16 just for administrative ease rather than every day.
17 But every day on our website it's reported where
18 Virginia-breds win and what jurisdiction, so it's
19 very easy for us to track.

20 CHAIRMAN VAN CLIEF: How has the response been
21 from your constituency here in Virginia? Are you
22 getting feedback that this is in fact something that
23 is going to be effective in sustaining and promoting
24 the kind of participation you're hoping to build?

25 MS. EASTER: I think the largest frustration

1 from our constituency is that we can't do anything
2 here in Virginia, and part of them argue we ought to
3 be able to do it somewhere else, but I have nothing
4 but positive feedback from the constituency here.

5 Obviously, we know the political pressure to try
6 and make sure that purse money goes to Virginians.
7 While not all owners of Virginia-breds are
8 Virginians, we feel it's the closest thing that we
9 can do to help Virginians.

10 You know, if it's not a Virginia owner, you're
11 certainly hopefully going to be helping a Virginia
12 breeder whose mares' values increase.

13 But nothing but positive from not only our guys,
14 but as we talk around to the different
15 jurisdictions, obviously, they like it because we're
16 putting extra purse money into their races, which
17 hopefully drives entries into their races.

18 I do want to make you aware. I think I did try
19 to do this, but I realize that we're not all
20 professional marketing people here. We're wearing a
21 lot of hats and trying to do the best thing we can.

22 We did in error on our website in one section of
23 our website not use the phrase "pending Virginia
24 Racing Commission approval".

25 As far as I can see, everything else that was

1 mailed out, sent out had it, but it wasn't there.
2 It was brought to my attention Sunday night. We
3 changed in as soon as we saw it, but we did have
4 that out there mistakenly for probably since the
5 middle of May.

6 CHAIRMAN VAN CLIEF: At this point are there any
7 questions from the commissioners?

8 COMMISSIONER REYNOLDS: I've got a question,
9 Ms. Easter.

10 MS. EASTER: Sure.

11 COMMISSIONER REYNOLDS: I know we're doing this
12 because Virginia is one of the few racing industries
13 in the Mid-Atlantic that does not have alternative
14 gambling and things like that, but is there any
15 precedent in other states for these owners-added
16 bonus programs?

17 MS. EASTER: Sure, but probably not out-of-state
18 and, you know, I think we have a precedent in this
19 state because our Breeders Fund already pays for any
20 win anywhere in the continental United States, and I
21 think the thought when that was originally set up
22 was that we don't have year-round racing here, so
23 let's try and make this as much a year-round program
24 as we can.

25 You know, the thought process here is our guys

1 don't have the opportunities. We've been giving
2 them opportunities as much as we can at the Gold Cup
3 parimutuel, but other than that right now, we don't
4 have a place for them to race.

5 what I hear, Frank's board was a large driver of
6 this program, and what I heard from his board
7 members were I've got customers that have
8 Virginia-breds. You know, they're not able to
9 participate very well in the program.

10 we had the 100 percent bonus at Colonial that
11 was very popular, and while it may not have driven
12 the market, we hope to drive maybe a little bit more
13 with this for Virginia-breds. What it did do very
14 well was drive horses to Colonial Downs for entries.

15 But I think that the large -- from Frank's
16 constituents was I got clients. We have people that
17 have these Virginia-breds. They don't have the
18 opportunities now. We need to give them more
19 opportunities. That was the thought process behind
20 this program.

21 COMMISSIONER REYNOLDS: So we've done this at
22 Colonial Downs, not a breeders award, but an owners
23 supplemental award.

24 MS. EASTER: Yes, and we paid owners awards at
25 the Gold Cup.

1 COMMISSIONER REYNOLDS: We've done it before,
2 but not out of state.

3 MS. EASTER: We've done it as breeders awards
4 out of state, but we haven't done it -- I think I'm
5 correct about that. Frank?

6 MR. PETRAMALO: Yes. That's correct.

7 COMMISSIONER REYNOLDS: Is this a temporary
8 thing just from July to December or is this
9 something you would like to see year in and year
10 out?

11 MS. EASTER: Right now, the program is July
12 through December 31st. If you want me to be honest,
13 if it's a successful program and we all think it
14 goes, let's face it. We've been up here and we know
15 that the opportunities are still going to be
16 minimal.

17 If it was successful and everybody liked it, I
18 could see it getting extended until we had racing
19 again, you know, but I don't think anybody's ready
20 to say that right now. But I would leave that
21 opportunity out there.

22 COMMISSIONER REYNOLDS: One more question.
23 Maybe you or Frank can speak to the pockets of money
24 that you have. You all want to take this out of the
25 restricted fund, from what I understand. Can you

1 tell us why you would want to take it out of the
2 restricted fund and not out of another fund or funds
3 that you all have? why the restricted fund?

4 MR. PETRAMALO: Yes. The HBPA has two accounts.
5 One is what we call the restricted account, which
6 came about because of the change in the law.
7 Starting July 1st last year, the law was changed to
8 read that all ADW revenue that we receive had to be
9 used for purses in Virginia, unless the Commission
10 gave us permission otherwise.

11 There's currently about \$2.1 million in that
12 account. We also have what we call a discretionary
13 account. This is the money that we accumulated in
14 the past which was not restricted by statute, and
15 which accumulated because we had no racing at
16 Colonial Downs after 2013. There's approximately
17 \$4.1 million in that account.

18 Now, we seek to use current money, restricted
19 money for this bonus program. The reason is we want
20 to keep a reserve in the discretionary account, that
21 4.1 million. We've been supporting the efforts of
22 VEA to get racing going in Virginia. We've loaned
23 them \$250,000 from that account. We've earmarked
24 another 1.2 million that we will be loaning to them.
25 Again, that's principally for the construction at

1 Woodstock and Morven Park.

2 Also, it's kind of like a rainy day fund. We
3 are -- the VEA is discussing plans to start up its
4 own ADW company similar to the EZHorseplay business
5 model that Colonial used. Well, Colonial spent
6 almost \$2 million buying equipment, the kiosks and
7 the touch screens that were put in over 100 social
8 clubs, bars, restaurants throughout the
9 Commonwealth. Very successful, but required them to
10 spend \$2 million. So we were thinking, well, maybe
11 we might want to do something like that.

12 Also, I'll be candid. I think somewhere down
13 the road we may well have an opportunity to race at
14 Colonial Downs, whether that means leasing the
15 facility or perhaps putting together a group to buy
16 it. No surprise you need money, so we'd like to
17 keep as much money as possible in our reserve while
18 at the same time we of course want to support the
19 efforts of our breeders and to help our owners.

20 COMMISSIONER REYNOLDS: I appreciate that.
21 Thank you.

22 MS. EASTER: I think that all of us would like
23 to be using it as purse money, but everybody has to
24 face the reality that without increased revenues
25 here, we're not going to be able to grow this very

1 well. We could, after investigating borrowing
2 money, it seems, you know, obviously, the horsemen,
3 it's in their best interest to grow the revenue
4 streams and what might happen in the future with the
5 tracks, and we're lucky enough that they potentially
6 are willing to help the industry out with that.

7 COMMISSIONER REYNOLDS: My last question, Mr.
8 Chairman. How much money do you project making this
9 year off of the ADW revenue? Where are you in line
10 through I guess now?

11 MR. PETRAMALO: I think on a net basis, we'll
12 probably accumulate about two-and-a-half million
13 dollars. When I say net now, that means of course
14 we have these rebate programs with TwinSpires and
15 Xpressbet. We rebate to them, they sell their
16 content to the VEA at reasonable prices.

17 COMMISSIONER REYNOLDS: Do you think after the
18 rebate you would wind up about --

19 MR. PETRAMALO: Two-and-a-half.

20 MS. EASTER: Remember that the VEA, just our
21 portion, the VEA's portion is about \$1.8 million,
22 but everybody has to remember that money besides the
23 daily operating is going to trying to open OTBs.
24 We're using those operating funds to make the
25 upgrades to Woodstock and to Morven Park as much as

1 we can without having to dip into those reserves.
2 So that's where, you know, those funds are going.

3 COMMISSIONER REYNOLDS: What I'm trying to get a
4 handle on is you're at 2.2 million and we're talking
5 about, you know, graded stakes up in Maryland.
6 We're talking about Virginia-breds in Maryland and
7 this new program. All of a sudden, I see all that
8 money is draining out of that fund. So that's why I
9 asked the question what's coming behind it to
10 replenish the coffers.

11 MR. PETRAMALO: Not to denigrate the amount, but
12 if you look at it, we're contemplating and the
13 Commission has already approved spending 250,000 in
14 the fall for the Virginia-bred stakes at Laurel, and
15 if we were to go forward with the graded stakes
16 plan, that would be another 200,000, and of course
17 we've got the Virginia-bred races this Saturday at
18 Pimlico.

19 So it's -- I'm just trying to do it in my head.
20 We are looking at spending maybe half a million. So
21 if we've got 2.1, we spend half a million, we still
22 have 1.7.

23 MS. EASTER: We spend about \$200,000 a day with
24 the Gold Cup to help increase their purses, too.

25 MR. PETRAMALO: Yes. I'm sorry. I didn't mean

1 to slight Dr. Allison. I'm sorry.

2 MS. EASTER: I think that, you know, that's a
3 normal sequence of events. When they ran at
4 Colonial, you all have to understand the purse fund
5 would draw up for the race meet and it would drain
6 again.

7 Those moneys ought to be used as much as we can
8 to give back to the horsemen, but unfortunately,
9 we're in a position where we have to build the
10 system a little bit again and that's why we hold the
11 reserve.

12 COMMISSIONER REYNOLDS: I don't disagree with
13 you. Thank you, Mr. Chairman.

14 CHAIRMAN VAN CLIEF: Thank you, Commissioner.
15 Any other questions for Ms. Easter? Debbie, I ask
16 you then if you could help me be a little bit more
17 precise than my agenda shows --

18 MS. EASTER: Sure.

19 CHAIRMAN VAN CLIEF: -- in terms of the approval
20 you're seeking. Obviously, you're seeking approval
21 of an owner bonus program. Would you add exactly
22 what amount you want approved and exactly from
23 whence that will be coming and I think we can put a
24 motion together.

25 MS. EASTER: Sure. We'd like to direct \$500,000

1 to this program. We'd like it to run from July 1st
2 to December 31st of 2016. We would like it -- for
3 any horse that wins a race, an overnight race
4 excluding stakes in the states of New York, New
5 Jersey, Delaware, Pennsylvania, West Virginia and
6 Maryland, that we would provide a 25 percent bonus
7 on top of the winning purse.

8 CHAIRMAN VAN CLIEF: One last question before I
9 ask for a motion. That would be the \$500,000, and
10 obviously a projection that you anticipate will
11 cover payment of those bonuses. If you receive that
12 amount, where does the guarantee come from that you
13 will be able to make the payments?

14 MS. EASTER: We have a pretty good track history
15 of the winners, because obviously, we track all the
16 winners, Virginia-bred winners for the Breeders
17 Fund. So over the last couple of the years, if we
18 had put in this program we would have spent less
19 than \$450,000 so we built ourselves a little
20 cushion.

21 I do anticipate you'll probably see some horses
22 come from other places to run in the Mid-Atlantic
23 just because of this 25 percent bonus, but I think
24 that the HBPA board is prepared to fill the gap,
25 should we go over 500,000. I'll let Frank answer.

1 MR. PETRAMALO: Yes. That's correct. If it
2 exceeds 500,000 we'd use money from our
3 discretionary fund to make up any shortfall. I'm
4 not sure, Debbie. Did you mention that there was a
5 \$10,000 cap per win?

6 MS. EASTER: I forgot to do that. I'm sorry.
7 For any one win, there's a \$10,000 cap on that.
8 Thank you, Frank.

9 CHAIRMAN VAN CLIEF: Okay. Thank you. All
10 right. Before I ask for a motion, I'm going to
11 break away from script for a moment here.

12 Generally, we have a public comment period, but
13 last time we had a public comment, it occurred after
14 the action, so there were some I think justifiable
15 complaints about that, and given the fact that I
16 don't think we have too many comments, I'm going to
17 make an exception today and ask the public if
18 anybody wants to say anything about this.

19 If you do, I would ask that you state your name
20 for the record and keep it to -- I will also break
21 away from the script. We normally give five
22 minutes. I don't think we need that much here. At
23 least I don't think so. Try to keep it to three
24 minutes max since we're on a timeline. Is that a
25 hand I see up back there?

1 MR. BERMAN: It is. My name is Tad Berman. I'm
2 a member of the general public. Yes. I do object
3 to these owner bonuses. In the last three years, we
4 have spent almost \$2 million in purses out of state
5 to run in Maryland. We also have had the breeders
6 bonus program for years that awards breeders when
7 they race out of state, and now we're going to award
8 up to \$500,000 of Virginia public money to reward
9 owners of Virginia-breds out of state.

10 It's just a continuing process of syphoning
11 money out of the state of Virginia. You know, as a
12 member of the general public, I just don't know what
13 to say about that. I mean when we voted to have
14 racing, we voted to have it here in Virginia. We
15 didn't vote to have it in other states and money
16 generated to be spent out of state.

17 You know, talking about the money before and
18 after. Mr. Petramalo has \$4.1 million in an account
19 that is completely unaccountable. We have no way of
20 knowing exactly how much is in there.

21 If you even -- as much as I don't want you to
22 pass this, if you're going to do this, I want you to
23 take that money out of the account from before
24 July 1st and not after July 1st, and I want to use
25 that money from before July 1st and then if they

1 need money after the July 1st money from 2015, they
2 can come to the Commission and ask. That way, the
3 public will know where that money is going.
4 Otherwise, we have no idea.

5 So I would say if you're going to consider this,
6 at least take it out of the money from the pre
7 July 1 account. There's plenty of money in there.

8 After that, I've got nothing more to say about
9 this issue. I will tell you, Mr. Van Clief, that I
10 am going to have some comments about other issues on
11 the agenda and I'll appreciate if you will recognize
12 me for those.

13 CHAIRMAN VAN CLIEF: Thank you. I appreciate
14 your thoughts and sincerity. Any of the horsemens
15 organization reps like to make a quick comment in
16 response to Mr. Berman's comment?

17 MS. EASTER: I do, and Frank may have something.
18 Two things when we talk about taking money out of
19 state. You don't think about having a horse and
20 then tomorrow you have it. Breeders and owners,
21 it's a long-term process and it wasn't their fault
22 that this thing blew up.

23 So for lack of a better way, you don't want to
24 penalize the folks that have horses in this area
25 when we're not running it at top level. I mean we

1 have to try and give these people some
2 opportunities, and we're not giving them -- they're
3 not going to have the opportunities they had for the
4 last 17 years, but we are trying to do a little
5 something while we rebuild things, and I think
6 that's something that you all ought to consider.

7 Secondly, I can't speak about what happened
8 before, but certainly as the industry has come
9 together and taken this over, I think we have tried
10 to be as transparent as we possibly can be.

11 Now we are going to make mistakes as far as I
12 tell you all we come here and we talk about how we
13 spend money. Quite frankly, if Frank wanted to take
14 money from his discretionary fund and do this, we
15 would not even have to come to the Commission and
16 ask to do it under the law, but that's not the right
17 thing to do.

18 So while yes, we'll make a mistake, we'll forget
19 to ask this, do that sometimes, I think as you can
20 see from these last meetings since the Alliance has
21 been formed, I think we all want to have this
22 transparency that sometimes we all got frustrated
23 that didn't happen between Colonial and the
24 Commission.

25 So I think it is great that Mr. Berman wants to

1 ask questions and do those things, but I think that
2 he speaks from a person that hasn't -- doesn't own a
3 horse and doesn't understand how long and how few
4 opportunities you get.

5 I welcome his questions about where we're
6 putting money and doing those as we do yours. I
7 think that's what you should take into consideration
8 when you all are talking about this.

9 MR. BERMAN: I would just say I've owned five
10 race horses in partnership, so I'm not completely
11 foreign to the ownership.

12 MS. EASTER: My apologies to you.

13 CHAIRMAN VAN CLIEF: We appreciate your
14 comments. At this point, Ms. Easter has asked the
15 Commission to consider approving up to a \$500,000
16 expenditure to support owners bonuses. The program
17 would run from July 1st to December 31st of this
18 year. Those bonuses would be awarded to successful
19 Virginia-breds competing in overnights in a
20 multi-state area which she has defined. Those
21 bonuses would be 25 percent of purse with a \$10,000
22 cap. Did I capture most of it?

23 MS. EASTER: And only for wins.

24 CHAIRMAN VAN CLIEF: To be awarded in the case
25 of a win only.

1 MS. EASTER: We'd like to do it for more, but we
2 don't have that much money.

3 CHAIRMAN VAN CLIEF: So we need a motion if
4 anyone is so inclined.

5 COMMISSIONER MILLER: Could I ask a question of
6 just anyone? Anyone from the public or anyone,
7 stakeholder want to respond. How does it benefit
8 the horse industry and the agricultural industry,
9 horse ownership breeding industry in Virginia to
10 leave money in an account, since the only racing we
11 have is the Gold Cup twice a year and the flat races
12 that occur there?

13 That's the only racing we have in Virginia now.
14 Well, we've had harness racing -- we hope we are
15 going to have harness racing in Virginia, but how
16 does it benefit the industry to leave money lying in
17 an account as an alternative to what is being
18 proposed?

19 CHAIRMAN VAN CLIEF: Mr. Hannum.

20 MR. HANNUM: I will comment. I'll give my
21 colleagues a moment to rest. They've done a lot of
22 talking today. It's a very good question.

23 The owner bonus program, which I'll address, is
24 a great idea and I encourage the Commission to
25 approve it. It will make owning a Virginia-bred

1 more valuable, which will have a direct impact on
2 the breeding industry, and the more horses that are
3 bred in Virginia, that is good for agriculture and
4 all the different related industries associated with
5 raising a horse and keeping a farm operating.

6 All these things take time and a program like
7 this, and I hope it would be continued into next
8 year and going forward, sends a signal that a
9 Virginia-bred has added value and comparable value
10 to horses in New York or Pennsylvania where you have
11 these very strong breeding and owner bonus programs.
12 So I think it's a very good idea and the direction
13 that we should all be going.

14 The fact that the bonus will be offered in the
15 region makes it more attractive than New York and
16 Pennsylvania and West Virginia programs which are
17 just in those states.

18 So a horse that competes at a high level will
19 race in multiple jurisdictions and this encourages
20 that type of horse and those owners and the breeding
21 of that high quality horse.

22 The discretionary fund is critical to the
23 future, and I'll talk later today about some
24 activities that we have at the racetracks and OTBs.

25 But the fact of the matter is, and this is where

1 the gentleman that spoke earlier is perhaps being
2 short-sighted. We can't race horses in Virginia
3 unless we have a place to race them, and so the
4 Virginia Gold Cup is one of the premier steeple
5 chase events in the United States and we are very
6 fortunate to have that and we are very fortunate
7 that Dr. Allison and his team run it so well and we
8 can look forward to a lot of great days of the
9 Virginia Gold Cup going forward, but it's limited in
10 terms of the opportunities it can provide to fine
11 horses, and obviously, it doesn't produce
12 opportunities to any standardbred horses.

13 So we have a project going on right now at
14 Woodstock which is going to cost about \$700,000 to
15 build what will be a state-of-the-art harness track
16 which will be one of the best in the region. That's
17 something the state can be very excited about and
18 our friends in the harness industry are going to be
19 in a very strong position at the end of the year to
20 have that facility. But we couldn't do it unless
21 those discretionary funds are there because that's
22 going to pay for this track.

23 Morven Park, to jump ahead, is going to be
24 another project that's going to cost, you know, six
25 or \$700,000, and again, we can't do that with the

1 funds the VEA has.

2 So I think we really need to look over the
3 long-term here. As I said many times with Colonial
4 Downs' closing and all the effects that it has had,
5 Humpty Dumpty fell off the wall and has broken and
6 now we're putting the pieces back together, and wish
7 it could happen in a year, but it's going to take
8 two or three years and longer.

9 So it's absolutely critical that discretionary
10 funds are left alone. Those moneys will be used to
11 rebuild racing so we can have racing back in the
12 state.

13 CHAIRMAN VAN CLIEF: Thank you, Mr. Hannum.

14 MR. BERMAN: I'd just like to respond to that.
15 These owners bonuses, these breeders bonuses, they
16 only benefit a small group of people. You know,
17 it's just a limited amount of people. I did a study
18 a couple years ago. We had those out-of-state races
19 and I think just about ninety percent of the money
20 was won by the top ten percent of the people that
21 received breeders bonuses.

22 But talking about the money we're spending at
23 Woodstock and Morven, those improvements that we're
24 making, those were gifts to those people and we're
25 not going to see any kind of benefit from that,

1 except for them to have a place to race. Those
2 places can't even have simulcasts.

3 If we are going to invest that kind of money,
4 you know, I want it all to come out of that
5 discretionary fund. I want the \$500,000 for this to
6 come out of that discretionary fund, because if you
7 want to give them \$700,000 for Morven after the
8 July 1st money, you can approve it and do that.
9 There's no problem with that.

10 But the money that's in that fund, I want that
11 money to be used now because there is no
12 transparency and the public does not have any idea.

13 What I would like to ask Mr. Petramalo today is
14 to open those books from July 1, 2014 to present so
15 the public can see those books and clear the air,
16 and if there's no problems, then that will be the
17 end of that. But until we see that, I'm going to
18 continue to question that fund.

19 MR. HANNUM: I think --

20 MR. PETRAMALO: Let me just comment.

21 CHAIRMAN VAN CLIEF: Gentlemen. What I don't
22 want this to do is to turn into a debate, so we are
23 going to stop it right here. Everybody is entitled
24 to their point of view. I know you were honest with
25 your points of view.

1 I have one as well, and it has to do with the
2 issue on the table, which is a request from the VEA,
3 the HBPA and the VTA that we approve a bonus program
4 today.

5 I happen to go ahead and air my own opinion, a
6 subscriber to the theory that if you don't have
7 incentives for a business, it will whither or move
8 out of state.

9 The folks who are here in Virginia breeding
10 horses, racing horses and continue to breed, race
11 and operate their businesses in this Commonwealth, I
12 think they do so because they love being here, but
13 they've got to have some incentive.

14 I think that the VTA and the HBPA are wise in
15 creating this program this year. It provides some
16 incentive in the face of massive competition from
17 the racing jurisdictions all around us, which has
18 already sucked a lot of the horses and dollars out
19 of this state.

20 If we are going to maintain a breeding industry
21 of any scope whatsoever and all of the collateral
22 industries that supports from legal services to
23 accounting services, tax sales, feed sales,
24 construction trades and so forth, then we've got to
25 provide some incentive, and I for one think that

1 this is a step in the right direction.

2 So I will ask my fellow commissioners again if
3 they have any questions or if anybody would like to
4 make a motion at this point.

5 COMMISSIONER MILLER: I move that we approve the
6 request.

7 CHAIRMAN VAN CLIEF: Commissioner Miller moves
8 that we approve. Do we have a second?

9 COMMISSIONER STEGER: Second.

10 CHAIRMAN VAN CLIEF: Commissioner Steger
11 seconds. Is there any additional conversation or
12 any further discussion?

13 COMMISSIONER DAWSON: Mr. Chairman, I'd just
14 like to add my opinion as well. During this period
15 when we're clearly not at top operating speed in
16 this state for horse racing, I see this as a method
17 to not only encourage but sustain the breeding
18 operations that we have and give them some incentive
19 to improve, keep their breeding improving, and I
20 just don't see the opposite argument as -- although
21 I respect it, I don't see it as being quite as
22 persuasive as the argument that was presented to us
23 by Ms. Easter and Mr. Hannum.

24 CHAIRMAN VAN CLIEF: Thank you, Commissioner. I
25 think Mr. Hannum makes one great point, too, and

1 that is you can't build much of a racing industry if
2 you don't have the facilities of which to race.

3 Colonial Downs is obviously off line for the
4 foreseeable future. I hope Mr. Petramalo is right
5 and there will be a merging strategy and we will see
6 Colonial Downs back in action one day, but
7 meanwhile, we have to spend the money to create
8 these facilities so our horsemen will have a place
9 to run at home here, hopefully in Woodstock this
10 year and eventually at Morven Park in the future.

11 Anything further before I call the question? We
12 have a motion and a second to approve the request as
13 set forth by Ms. Easter. All in favor, signify by
14 saying aye.

15 NOTE: The Commission votes aye.

16 CHAIRMAN VAN CLIEF: Any opposed?

17 NOTE: There is no response.

18 CHAIRMAN VAN CLIEF: The motion passes. The
19 owner bonus program is approved for 2016.

20 Next up is a request from the VHBPA to approve
21 the graded stakes race and an additional maiden race
22 funding. Is that Mr. Petramalo?

23 MR. PETRAMALO: Yes. I'd like to take the last
24 one first, the additional maiden race. The
25 Commission a meeting or two ago, perhaps longer,

1 approved three Virginia-bred stakes and one maiden
2 Virginia-bred race for this Saturday at Pimlico. I
3 would like to request permission to use from our
4 restricted fund another \$30,000 to add a maiden race
5 for mares and fillies.

6 After the Commission approved the open maiden
7 race for Virginia-breds, there was discussion at
8 both the VTA board and the HBPA board about having a
9 race also limited to fillies and mares. That's kind
10 of a recurring theme that we always see at our
11 boards; you're not riding enough races for the
12 girls. So we'd like to spend another \$30,000 for a
13 maiden race for fillies and mares, Virginia-bred.

14 CHAIRMAN VAN CLIEF: You're asking that as a
15 separate --

16 MR. PETRAMALO: Yes. Separate.

17 CHAIRMAN VAN CLIEF: Any questions for Mr.
18 Petramalo? In that case, we have a motion to
19 confirm or deny.

20 MR. BERMAN: I have a comment. I'd like to
21 comment, please.

22 CHAIRMAN VAN CLIEF: Mr. Berman, are your
23 comments of a different nature than your past
24 issues?

25 MR. BERMAN: Absolutely.

1 CHAIRMAN VAN CLIEF: Please keep it to sixty
2 seconds.

3 MR. BERMAN: Okay. Well, I'll try. Three years
4 ago in 2014, we approved \$36,000 to state-bred
5 racing. I objected. Last year, we approved, I
6 don't know, I think it was \$400,000--some for
7 state-bred races. That's a tough pill to swallow
8 for me, but I accepted it because I know that
9 breeders are in a bind.

10 Last year, we spent \$800,000 on the stakes races
11 out of state open to horses anywhere. We received
12 no economic benefit for that.

13 You know, that \$800,000 with the condition that
14 Virginia racing is in now would be better spent here
15 at home rebuilding our OTB system or developing
16 other places for our horsemen to race.

17 You know, last year, Mr. Petramalo, I think he
18 told us at the last meeting -- am I correct, Mr.
19 Petramalo, that you said that Maryland was going to
20 pay for half of this? They're going to pick up
21 200,000, we're going to put up 200,000?

22 MR. PETRAMALO: That's correct.

23 CHAIRMAN VAN CLIEF: Mr. Berman, if you'd just
24 address your remarks to the Commission and make them
25 declarative.

1 MR. BERMAN: You told us the same thing last
2 year on July 1st when he asked for \$450,000 and said
3 Maryland was going to pay half. Then he came back
4 at the next meeting and Maryland had backed out and
5 requested another \$350,000. So what is going to
6 stop that from happening again this year?

7 Once he gets one foot in the door, then he's
8 going to come back at the next meeting, perhaps, and
9 ask for another \$200,000. So that's on the record
10 and that happened and I'm just saying, you know,
11 absolutely not for these out-of-state open stakes
12 races. There's just no way.

13 CHAIRMAN VAN CLIEF: Thanks for your opinion.

14 MR. BERMAN: Thank you.

15 CHAIRMAN VAN CLIEF: So the request then is for
16 a \$30,000 allocation to fund a maiden filly race?

17 MR. PETRAMALO: Yes.

18 CHAIRMAN VAN CLIEF: Okay. That will be run
19 again when, where?

20 MR. PETRAMALO: This coming Saturday at Pimlico.

21 CHAIRMAN VAN CLIEF: Okay.

22 MR. PETRAMALO: It's a maiden Virginia-bred.

23 CHAIRMAN VAN CLIEF: Questions? If not, can we
24 entertain a motion?

25 COMMISSIONER REYNOLDS: Mr. Chairman, I move

1 that we approve the \$30,000 additional maiden race
2 for fillies and mares to be run this Saturday at
3 Pimlico.

4 CHAIRMAN VAN CLIEF: Thank you. Is there a
5 second?

6 COMMISSIONER DAWSON: I second it.

7 CHAIRMAN VAN CLIEF: Thank you. Any further
8 discussion? If not, all in favor, signify by saying
9 aye.

10 NOTE: The Commission votes aye.

11 CHAIRMAN VAN CLIEF: Any opposed?

12 NOTE: There was no response.

13 CHAIRMAN VAN CLIEF: Thank you very much.

14 Mr. Petramalo, the graded stakes races.

15 MR. PETRAMALO: Yes. We deferred consideration
16 of this issue three or four meetings ago. The issue
17 being our request -- the HBPA's request to run in
18 Maryland our Virginia Derby, and what used to be
19 called Virginia Derby now the Commonwealth Derby,
20 and the Virginia Oaks, now the Commonwealth Oaks.

21 The purse for the Derby would be 250,000, the
22 purse for the Oaks would be 150,000 for a total of
23 \$400,000. What we'd like to do, what we seek is
24 your approval to allow us to do that this year on
25 September 24th at Laurel as part of Virginia Day.

1 You've already approved our five Virginia-bred
2 stakes races on Virginia Day on the 24th. What we
3 seek to do is add these two graded stakes races to
4 it.

5 With regard to the 400,000 purse money, the
6 Maryland Jockey Club and the Maryland horsemen have
7 agreed to put up 200,000. Moreover, they have
8 agreed that if racing doesn't return to Virginia
9 next year and give us the ability to bring these
10 stakes races back to us, that they on the same terms
11 and conditions will allow us to run those in
12 Maryland.

13 Now the reason this is important is if the races
14 aren't continuously run, they lose their graded
15 stakes status. The Virginia Derby carries a grade
16 two. Excuse me. The Commonwealth Derby carries a
17 grade two. The Commonwealth Oaks carries a grade
18 three. We've spent millions of dollars from the
19 horsemen's purse account over the years beginning 15
20 years ago to upgrade the purses, upgrade the quality
21 of horses and achieve graded status.

22 If we don't run them this year, we will lose
23 that status because the graded stakes committee has
24 a rule which says if you don't run them in two out
25 of the last three years, you lose the graded stakes

1 status.

2 Now before I get to talking about why that's
3 important, let me also add that there's a third
4 element to this proposal that I'm putting before
5 you. That is that you authorize us to cede or give
6 to the Maryland Jockey Club and the Maryland
7 horsemen whatever rights we have to the Commonwealth
8 Turf Cup, used to be the Virginia Turf Cup. That's
9 pretty much the quid pro quo.

10 Maryland wants to run that race. They'll pay
11 for the purse and everything. They want to run that
12 purse this fall also to maintain its graded status.

13 Because my view, their plan is in 2017, they
14 will start receiving a half million dollars from the
15 Maryland legislature to reinstitute what used to be
16 called the D.C. International, which was a very
17 famous turf race that drew international
18 competition. It will now be called the Maryland
19 International.

20 what they will do is simply take the
21 Commonwealth Turf Cup, which already is a grade two,
22 and then rename it so it now becomes the Maryland
23 International, thereby giving it a certain prestige
24 and marquee factor that it wouldn't normally.
25 That's their interest in doing that.

1 That takes me around to why I think it's
2 important for us to maintain these graded stakes
3 races for Virginia.

4 That is, they have a great deal of branding
5 effect on the quality of horse racing in Virginia.
6 If we're able to run Virginia in Virginia graded
7 stakes races, horsemen across the country take a
8 look and say well, gee, that must be something.

9 You can look at our neighbors in west Virginia.
10 For years and years and years, they have year-round
11 racing, no graded stakes. Everybody thought west
12 Virginia racing was lower tier, let's put it that
13 way. Now they started spending money. They've got
14 graded stakes and all of a sudden people are coming
15 from Kentucky, Florida, et cetera to race at Charles
16 Town. This gives you branding. It gives you
17 standing in the industry.

18 Now Mr. Berman is absolutely right that these
19 graded stakes don't often directly result in money
20 going into the pockets of Virginians.

21 I think if you look back since the first
22 Virginia derby was run in 1997, there hasn't been
23 one winner that was owned by a Virginian. Got a lot
24 of publicity, got it on TV, et cetera, but these
25 were marquee races that put Virginia racing on the

1 map. We want to do that again.

2 The irony, of course, is last year, I think it
3 was the Virginia -- the old Virginia Derby, the
4 Commonwealth Derby that we ran at Laurel for the
5 very first time I believe was at -- the Derby was
6 won by a Virginia-bred horse. First time. But the
7 point is we want to spend \$200,000 to keep this
8 brand, to keep the marquee events for when we
9 reconstruct and reconstitute our racing here in
10 Virginia and we'd like to take it back up to where
11 it used to be and even surpass it. That's the
12 reason.

13 So in a word, I'm looking for approval to spend
14 \$200,000 from our restricted purse account on these
15 Maryland-run Virginia races. Let me quickly add
16 that our agreement with the Maryland Jockey Club is
17 that we will receive the horsemen's share of
18 wagering on the races.

19 CHAIRMAN VAN CLIEF: Approximately how much do
20 you think you would project that those receipts
21 would total?

22 MR. PETRAMALO: If you throw in, excuse me. If
23 you include the five Virginia-bred stakes and two
24 graded stakes, I would say probably close to
25 \$75,000. Last year, it was about I think 60,000 or

1 something like that.

2 CHAIRMAN VAN CLIEF: Is that fair to say that
3 our net expenditure would be one and a quarter?

4 MR. PETRAMALO: To be fair, you'd have to
5 include both the 250 that we're spending for the
6 Virginia-bred stakes and the 200, so it's 450.

7 CHAIRMAN VAN CLIEF: Okay. Just a moment,
8 Mr. Berman. A couple of other questions. Just to
9 be clear, if you go forward with the deal you're
10 proposing now, is there an obligation to run those
11 stakes in Maryland again next year if we do not have
12 a venue for running them here?

13 MR. PETRAMALO: No. It's not an obligation.
14 It's our option.

15 CHAIRMAN VAN CLIEF: Okay.

16 MS. EASTER: But I do want to be frank with you
17 all, and I think this is all going to come up in the
18 discussions. You know, we were all projecting we
19 hoped we would have racing in 2017 at Morven. Still
20 hope that that will happen, but as you'll hear in
21 this discussion later on, you know, I don't know
22 that we'll start -- the ground will actually start
23 to be cut until probably late summer, fall, which
24 means we miss the fall growing season, which
25 potentially means racing gets pushed off until 2018.

1 So would we be back in front of this Commission
2 potentially asking for money again in future years?
3 I think yes. If that is the case and potentially
4 even for the first year that we run at Morven Park,
5 only because you just want to make sure that our
6 track is what we hope it would be. We don't want to
7 cause any unsafe situations so it's -- for that type
8 of horse that would be -- while we want to use these
9 races, this is a brand and publicity, we certainly
10 don't want to do anything that would cause us a high
11 level of negative branding.

12 So none of us can answer exactly how it's going
13 to work in the next two years because we don't know
14 the answers yet, but I'd say that's a possibility
15 that's out there.

16 CHAIRMAN VAN CLIEF: As far as the maintenance
17 of your grades, more obviously, you invested a lot
18 of money in maintaining these graded stakes, you're
19 making a point that you feel they're important to
20 the rebuilding of the industry about which you've
21 been consistent at least over the last couple of
22 years, and in terms of maintenance of the grade, if
23 you don't run next year, you're not in jeopardy,
24 correct?

25 MS. EASTER: Don't know that. The rule said you

1 have to run because you couldn't go two years
2 without running them, and then the rule also says
3 you have to run two out of three. I'd have to
4 double check. The way you read it, I think you're
5 correct.

6 CHAIRMAN VAN CLIEF: Two out of three by running
7 this year, you could take the money this year and
8 use the money elsewhere?

9 MS. EASTER: Potentially.

10 MR. PETRAMALO: I think that's probably right.

11 MS. EASTER: But I can't promise you that
12 without making a couple phone calls, but that's the
13 way I would read that rule.

14 CHAIRMAN VAN CLIEF: That's my understanding
15 from looking at the rules.

16 MS. EASTER: Me, too.

17 CHAIRMAN VAN CLIEF: Lastly, when you change
18 venue again with your race and eventually hopefully
19 soon bringing it home to Morven Park, what risks do
20 you run that you can't maintain the grade at Morven
21 Park? Is there a significant risk there? Is that
22 something to worry about?

23 MR. PETRAMALO: I don't know whether it's a
24 significant risk, but it is certainly a risk.

25 CHAIRMAN VAN CLIEF: The graded stakes committee

1 reevaluates after a change of venue; is that
2 correct?

3 MS. EASTER: They do, and part of the
4 determination is, is it the same money, is it the
5 same distance, is the race similar. We have already
6 made that Maryland to Virginia, Virginia back to
7 Maryland, hoping we can make the argument, but
8 there's quite a bit of subjective decision-making on
9 that graded stakes committee that I can't quantify a
10 risk for you, but I think we have a good argument
11 that, you know, as long as we can show that our
12 track is a safe, a good track, you know, I think we
13 can make that argument that we're trying to build a
14 good brand. I think we might have some --

15 CHAIRMAN VAN CLIEF: I just want to make sure
16 that -- I mean we understand there's risk involved
17 here, that despite all best efforts it's possible to
18 lose these grades --

19 MS. EASTER: Yes.

20 CHAIRMAN VAN CLIEF: -- at which point it'll
21 look like good money after bad.

22 MS. EASTER: Yes.

23 CHAIRMAN VAN CLIEF: So I guess what I'm asking
24 is, is your management team and are your directors
25 satisfied that the potential return on this

1 investment is a wise one, or that the investment is
2 wise and there is a potential return?

3 MR. PETRAMALO: Yes. I believe it is.

4 MS. EASTER: I think the boards are. Our boards
5 have very much been, you know, let's get it done. I
6 think we're getting it done as cheaply as we
7 possibly can by splitting the cost with Maryland. I
8 don't know how else we'd save. I think Frank has
9 come up with a good deal.

10 CHAIRMAN VAN CLIEF: It's worth the \$200,000
11 plus the risk in terms of a marketing expenditure;
12 is that fair to say?

13 MR. PETRAMALO: Yes.

14 MS. EASTER: I think Dr. Allison can talk about
15 the importance of what his big races do for his
16 deal. It think it helps his whole brand of quality.

17 CHAIRMAN VAN CLIEF: I don't disagree. I
18 understand the value of the marquee races and just
19 want to make sure that the thought process has been
20 complete and that your boards are evaluating risk
21 and everybody is still enthusiastically on board,
22 especially since we're probably at least potentially
23 looking at a similar request again for next year.

24 MS. EASTER: Yes, sir.

25 MR. BERMAN: One minute. That's all I need.

1 CHAIRMAN VAN CLIEF: Mr. Berman, we want to hear
2 from the public.

3 MR. BERMAN: Okay. Last year when Ms. Easter
4 first made this proposal, it was that we would put
5 up half the money and she announced that we would
6 get half the handle. Then they came back in a later
7 meeting and asked for additional money and said we
8 were going to get all the handle.

9 Then at a later date, Ms. Easter addressed the
10 Commission and said that the money was going to be
11 taken out of the purse money that we send to
12 Maryland. It was going to be taken out of that and
13 that's how it was going to work.

14 And at the July 1st meeting, I asked Ms. Easter
15 -- several people calmed me down because we were
16 getting into a debate and you didn't want us doing
17 that -- but I asked her if we were going to have
18 that in a written contract and she said yes. And I
19 have Mr. Petramalo in the transcript saying that
20 money would be deposited into the post-July 1st
21 purse account.

22 I made a Freedom of Information request just a
23 month ago from Mr. Lermond. I already knew the
24 answer to it. I asked him if there was a written
25 contract or if he had seen any evidence of a

1 deposit, and the answer was no.

2 Back last year before these races, this was so
3 questionable for me, I called the Maryland
4 Thoroughbred Horsemen's Association, talked to their
5 president. He told me he had no idea about this
6 arrangement. Then I called the head of your
7 counterpart of the Maryland Racing Commission and he
8 said he had no idea about this arrangement. I
9 called Sal Sinatra. He didn't call me back. I left
10 a message with his secretary.

11 I want some proof that we got that. Last time
12 when you asked Mr. Petramalo, he arbitrarily said,
13 oh, we got \$59,000. I want to see the proof. I
14 want to see a written contract and I want to see
15 that check. That's all I have to say about that.

16 CHAIRMAN VAN CLIEF: Thank you. Again, I think
17 my personal observation on these things is that as
18 the reconstruction of our industry evolves, we are
19 going to be dealing with these issues one at a time,
20 every one singular, and I can assure everyone in the
21 room that the Commission itself will take whatever
22 steps it feels necessary to evaluate any financial
23 data and make sure that we are satisfied with the
24 way the cash is flowing.

25 MR. PETRAMALO: Let me just comment with regard

1 to that --

2 CHAIRMAN VAN CLIEF: Mr. Petramalo. Sure.

3 MR. PETRAMALO: -- for Mr. Berman's benefit. We
4 provide the Racing Commission our monthly bank
5 statements. We've provided our 2015 federal tax
6 return, and most recently, we've provided the
7 Commission our 2015 audited financial reports.
8 There's transparency. We're not hiding anything or
9 doing anything underhanded. What we do, you know.

10 CHAIRMAN VAN CLIEF: Right. And I've spoken
11 with Mr. Lermond in his capacity as fiscal officer
12 about that very point, and if we have any questions
13 you'll be the first to hear them. We will keep an
14 open mind and dialogue in that regard.

15 MS. EASTER: Just a quick brief. I'm not saying
16 that we don't get up here and are nervous and you
17 say something, but I think sometimes what happens is
18 these Commission meetings might be 30 days apart,
19 might be 60 days apart.

20 Our world right now in 30 days changes quite a
21 lot. A deal you might have thought was happening 30
22 days ago might have changed quite a bit in there,
23 and so maybe the timing, maybe we don't represent
24 it, you know, maybe we didn't represent it
25 publically, but I think that's more the chain of

1 what happens versus somebody trying to hide
2 something. It just is a matter of timing and how
3 things are talked out.

4 CHAIRMAN VAN CLIEF: The whole thing is
5 evolutionary in nature and we're looking for best
6 effort and good faith, and again, if we had any
7 doubts about that, you'd know about it.

8 Okay. At this point, we're back to the request
9 from Mr. Petramalo, which is for an allocation of
10 \$200,000 from the restricted purse fund to support
11 our two remaining graded stakes, and takes into
12 consideration that part of the deal is to grant
13 Maryland -- is it the Maryland Jockey Club?

14 MR. PETRAMALO: Yes.

15 CHAIRMAN VAN CLIEF: -- the Maryland Jockey Club
16 the rights to the old Turf Cup.

17 MR. PETRAMALO: Correct.

18 CHAIRMAN VAN CLIEF: which will presumably
19 become the new International.

20 MR. PETRAMALO: Correct.

21 CHAIRMAN VAN CLIEF: Any questions for
22 Mr. Petramalo from any members of the Commission
23 with regards to his request?

24 NOTE: There is no response.

25 CHAIRMAN VAN CLIEF: In that case, do we have a

1 motion to approve or deny?

2 COMMISSIONER DAWSON: So moved.

3 CHAIRMAN VAN CLIEF: Is that to approve?

4 COMMISSIONER DAWSON: Yes.

5 CHAIRMAN VAN CLIEF: Motion to approve the
6 \$200,000 allocation. Is there a second?

7 COMMISSIONER REYNOLDS: I will second it.

8 CHAIRMAN VAN CLIEF: Commissioner Reynolds
9 seconds it. Any further discussion at this point?

10 NOTE: There is no response.

11 CHAIRMAN VAN CLIEF: If none, those in favor,
12 signify by saying aye.

13 NOTE: The Commission votes aye.

14 CHAIRMAN VAN CLIEF: Are there any opposed?

15 NOTE: There is no response.

16 CHAIRMAN VAN CLIEF: All right. Thank you much.
17 Before we get into the VEA report, Mr. Hannum, I
18 suggest that since we've been here for two hours and
19 37 minutes that we take a ten-minute break and let's
20 come back at less than ten minutes. If we could be
21 back at 12:45, Jeb, we'll start with your report.

22 MR. HANNUM: Okay.

23 NOTE: There is a recess at 12:41 p.m.

24 CHAIRMAN VAN CLIEF: I will recall us from
25 recess. I'm sure Commissioner Miller will be here

1 in a minute or two. Mr. Hannum, your VEA report is
2 next up on the agenda.

3 MR. HANNUM: Thank you, Mr. Chairman. I'll
4 start. There are three items here under Letter E.
5 I'll just do it in reverse order, if I can. I'll
6 start with number three, Morven Park.

7 Morven Park is moving along. As I explained
8 before, and I'll just explain again, the complexity
9 out at Morven is that in that approximately 100 acre
10 piece of land where the racetrack will be, Morven
11 Park is also building what they are calling their
12 equestrian horse park.

13 So in the infield, there will be two rings for
14 versage and show jumping and various sort of
15 equestrian events, and so our racecourse, our track,
16 has to fit in with their plans and their plans have
17 to fit in with ours.

18 So it has been a very complicated sort of
19 engineering feat to get this to mesh and we've had,
20 you know, literally two dozen versions of how the
21 course would look and how their rings would look and
22 going back and forth, taking into account rocks that
23 are out there that have barriers around them where
24 building can't take place, streams, et cetera, so it
25 has been a complicated and time consuming process,

1 but we finally as of Friday signed off on a concept
2 which is now going to be formally developed.

3 The engineering firm is developing what they
4 call the civil engineering package. That will take
5 about four weeks to develop. Then at the same time,
6 there's a geotech process that goes on which takes
7 up to six weeks where they go out and they literally
8 look at the land affected and drill holes for rocks
9 and those can take six to seven weeks.

10 Once those two are finished, then those two
11 reports go into the county for review and comment
12 and that can take up to four to six weeks. So
13 there's all these sort of processes that are in
14 place but are very time consuming and we know our
15 friends in Loudon can be very thorough when they're
16 faced with these sort of projects.

17 So we're moving forward. All of that sort of
18 preamble is just a way to say it looks unlikely that
19 we'd be racing in Morven Park in 2017, which is a
20 disappointment to us, but based on all the work and
21 permitting process that's involved, it's just
22 simply -- there's no way to accelerate the process
23 because much of it is in the hands of the county for
24 the approval process.

25 So we're pushing forward as quickly as we can

1 and hopefully 2018 will be the year that we're
2 racing at Morven Park.

3 One of the things that I want to mention is that
4 John Visaro [ph], who some of you may know or know
5 of, John is one of the top track experts on the east
6 coast, really in the country.

7 He's spent a number of years in New York and
8 then in Maryland as the person responsible for the
9 maintenance and the upkeep of the racetracks and
10 spent time in Canada at Woodbine.

11 John has retired from those responsibilities and
12 now is a consultant and he will be advising us on
13 the Morven Park project, and we had him out at the
14 course last week for the first time and he's very
15 excited about the project and is, you know,
16 understands and is enthusiastic about the concept
17 that we're trying to do here, which is obviously
18 different than a traditional racetrack. So I just
19 wanted to mention that.

20 Dr. Steger has been very helpful. One of the
21 things that we are looking at with Morven is where
22 the crossing will be on the racecourse, because
23 obviously, the Morven Park people have to access
24 their infields, so we have to factor in the
25 crossing, how it will look, if there's a secondary

1 crossing, the distance, the material. All these
2 sort of things we're looking at for making the track
3 as safe as possible and so we can attract the
4 top-tier horses in the region.

5 So Morven is moving along but delayed from what
6 we originally were hoping to be the start of racing
7 for a year. If there are any questions on Morven, I
8 can handle those or I can move on to Shenandoah
9 Downs.

10 CHAIRMAN VAN CLIEF: No questions.

11 MR. HANNUM: Okay. Shenandoah Downs is going
12 very well. There are bulldozers literally moving
13 dirt as we speak. We are on target, I hope, for
14 racing this fall pending Commission approval of our
15 license, which we will be submitting shortly to the
16 Racing Commission. Tom Eshelman, who is general
17 manager at Shenandoah Downs is here and I'll let Tom
18 sort of speak to the project a little bit.

19 We had brought a number of photographs of the
20 course, the track to show you, and unfortunately,
21 the disk that we used wasn't the right type based on
22 the computer that we had, and inevitably those
23 things despite best intentions tend to fall apart.
24 You have to take my word for it. Commissioner
25 Miller was out there the other day and can speak to

1 the fact that construction is well under way.

2 So, Tom, do you want to comment a little bit on
3 what's happening out there?

4 MR. ESHELMAN: Be happy to. It's a very
5 exciting time. Approximately I would say 14 to 15
6 pieces of equipment on the grounds. Four rock
7 quarry dump trucks, if you can envision those moving
8 dirt. We have approximately 4,000 cubic feet of
9 dirt being moved in order to widen and increase the
10 banking on all four turns. We lost, obviously,
11 quite a few days in May due to the rain so they are
12 behind, but they are diligently working feverishly
13 to get it back on track. It's very much taking
14 place. What you will see in changes was we had a
15 track that was about 45 feet wide on the average,
16 and now this track will be between 65 and 70 feet
17 wide.

18 We used to run four, sometimes five wide. Now
19 we will be able to run seven to eight wide. So
20 there's a lot that's happening.

21 As Jeb described with what's going on with
22 Morven Park, we have a crossing in order to use our
23 infield other days of the year as well. That has
24 already been designed. Geotech will take place with
25 that. Just for concerns of the public is how moneys

1 are being spent and everything as well.

2 The improvements to the fairgrounds are having a
3 huge trickling effect not only in our county, but in
4 surrounding counties as well. The construction
5 company comes out of Frederick County. They have
6 approximately, like I said, 15 pieces of equipment
7 on the grounds.

8 You have diesel fuel for this equipment. You
9 have employees running this equipment. We located
10 in Rockingham County, we're working with an audio
11 company, utilizing Shenandoah County electric
12 company. We're using Shenandoah County plumbing
13 company.

14 At any given time from the scope of this
15 project, you'll see anywhere from 70 to 80 different
16 people impacted just from a labor standpoint hiring
17 these business to help us out and assist in what's
18 going on.

19 Shenandoah County is very excited about it.
20 I've been on a speaking engagement tour. It is
21 being met overwhelmingly at the Rotary Club with
22 lots of questions and we're just very excited about
23 it. We're glad to be a part of it and invite all of
24 you all to come out. Mr. Miller did drop by
25 approximately a week ago. It's just a lot of dirt

1 out there right now, but it's taking shape.

2 Okay. I will add we are -- the scope of the
3 idea of bringing racing and expanding racing and
4 introducing it to new folks through tours and
5 everything, we are having events pretty much
6 scheduled for each weekend that we're racing.

7 It's difficult to make them happen over two
8 days. Most festivals don't take place over a
9 two-day period of time, but for instance, the first
10 opening weekend, which I believe will be the
11 Virginia Stakes Races as well, we are going to
12 feature a food truck festival both days, and it's
13 free to the public to come to the racing.

14 So we don't want to have a situation where
15 they're having to pay to come to see what this is
16 all about. So they'll be able to come, view the
17 racing, obviously participate with some various
18 foods that will be there.

19 The second weekend is an annual festival that we
20 didn't want to really compete against. It's called
21 the Edinburg Ole Time Festival. So we didn't want
22 to penalize our localities by having events that
23 would compete with them.

24 So again, we'll run free admission. That
25 festival is well attended. It's only four miles

1 from our track, so we're hoping to tie in and
2 encourage folks that, hey, after you attend that
3 festival, come on by and catch racing.

4 The third weekend of racing, we will feature a
5 craft beer and chili festival. We've got a chili
6 team coming in. We have 24 craft beers coming
7 through. Again, just reaching out to the general
8 public that might not have had themselves exposed to
9 racing, so maybe converting some of those folks
10 over.

11 We'll be featuring the first weekend of October
12 the wine and Trotter Festival, and that's our fourth
13 year doing that, and that's becoming a very
14 successful festival. It has definitely introduced
15 people to harness racing that would have never seen
16 it before. And how do we know that? Because they
17 come back to our fair to catch it.

18 We still continue to do our four days of harness
19 racing during the Shenandoah County fair, which will
20 not feature pari-mutuel betting. It will be what we
21 refer to as country racing.

22 The last weekend we'll have this year, still
23 working on that, but we're looking to bring some
24 sort of a food or seafood festival to the valley,
25 and again feature that with racing, and obviously,

1 there's cost involved with some of these events, but
2 you'll be able to still come and see the racing.

3 we're just excited about introducing new public
4 to the sport and bringing them in. We've had some
5 actually outreach from Charles Town racetrack as
6 well. We're within a 45 minute, you know, proximity
7 to them and we're hearing people just out on my
8 speaking engagements, I heard people say I go to
9 Charles Town. I'm looking forward to coming to you
10 guys. So that's encouraging when you're out in the
11 public.

12 CHAIRMAN VAN CLIEF: Thank you.

13 MR. HANNUM: Thank you, Tom. So the last thing
14 on that list was OTB development and we'll speak
15 more formally to that in a moment.

16 The VEA with the support of the Commission,
17 Dave, has been very helpful to look at sites with us
18 as we've gone through this process. We have looked
19 at a number of sites that we've mentioned at
20 previous meetings. We looked at a site this morning
21 at 8:30 south of Richmond before today's meeting.

22 We have two sites that we had done some work for
23 an application with. One of them we are submitting
24 today for your review and approval. The second
25 site, the ownership and management were not quite

1 ready to make the commitment, so we are putting that
2 on hold.

3 So we have one application for you today for the
4 satellite wagering facility at Breaker's Sports Bar
5 and Grill, and it's our hope to continue to look at
6 sites throughout the state where there has been a
7 referendum and where we can have additional ones.

8 So I don't have a timeline right now. And you
9 will see the second one, but it will sort of
10 hopefully be if not at our next Commission meeting,
11 the one after that. So we are moving as quickly as
12 we can on this process.

13 So if you'd like to then transition into the
14 application, we can, Mr. Chairman, or we can pause
15 and introduce that more formally, but that's my
16 update on those three items.

17 CHAIRMAN VAN CLIEF: Thank you, Mr. Hannum.
18 Before we do transition into the licensure hearing,
19 are there any questions on the report from
20 Mr. Hannum and Mr. Eshelman?

21 If not, then Mr. Lermond, I want to make sure we
22 did send out a hearing notice; did we not? So we
23 will style this as a hearing within the Commission
24 meeting, and I guess we need to swear in those who
25 are going to give testimony. Who is going to do the

1 honors, Mr. Hannum?

2 MR. HANNUM: I'll start, and I think others may
3 speak as well.

4 CHAIRMAN VAN CLIEF: Okay. We are in open
5 hearing at this point.

6 NOTE: John Hannum is sworn under oath.

7 MR. LAWS: Can you tell me your name for the
8 record?

9 MR. HANNUM: John Hannum.

10 MR. LAWS: What's your position?

11 MR. HANNUM: Executive director of the VEA.

12 MR. LAWS: How long have you held that position?

13 MR. HANNUM: About a year-and-a-half.

14 MR. LAWS: What are your duties in that
15 position?

16 MR. HANNUM: To oversee the staff and to
17 promote, sustain and grow the Thoroughbred and
18 harness industry and breeding industry in Virginia.

19 MR. LAWS: Thank you. Continue whenever you're
20 ready.

21 MR. HANNUM: So you'd like me to begin?

22 CHAIRMAN VAN CLIEF: Please.

23 MR. HANNUM: Okay. So you all were sent a
24 formal application for the satellite wagering
25 facility at Breakers Sports Bar and Grill. This

1 facility is on West Broad Street in Richmond. I
2 will just sort of give an overview of the details of
3 the submission.

4 Breakers is a bar/restaurant that has about a
5 120 person capacity. The facility is about 3500
6 square feet; it has two rooms. There's a nonsmoking
7 room which includes a separate entrance. This
8 nonsmoking room will be where the teller space is
9 located; the money room, the safe, et cetera, and
10 will also have three self-service machines and
11 approximately ten televisions.

12 The smoking room, which is sort of the main area
13 of the building and includes the tables for the
14 restaurant and the main bar will include four
15 self-service machines and approximately 12
16 televisions.

17 Initially, we'll have a contract for eight
18 racetracks, which will be a mix of Thoroughbred and
19 harness racing. Traditionally, the Thoroughbred
20 meets are more sort of in the daytime, with the
21 harness racing more at night.

22 It's important to point out that Breakers had
23 the betting kiosks when EZHorseplay was operational.

24 So there's a track record there amongst the
25 customers for supporting wagering and there's been

1 excitement that this is going to be coming back.

2 of the over 100 sites that had the kiosks
3 throughout the state in 2014, Breakers was sixth in
4 the amount of handle that they generated, so in the
5 top tier of all the different sites throughout the
6 state. This is one of the reasons why we've
7 selected this establishment.

8 In terms of the financials, we will be paying a
9 rent of the greater of \$500 or .25 percent of
10 handle. I mention that because we wanted to have an
11 incentive for the bar owner to work with us as we
12 promote and market the facility.

13 The EZHorseplay, when they were operational
14 didn't pay any percentage of handle. There was no
15 incentive for the owners to get people in the door,
16 so we hope that this is helpful as we promote the
17 site.

18 We have a signed two-year lease right now with
19 an option for two five-year renewals. We anticipate
20 based on the handle at Hurley's and at Colonial
21 Downs' larger SWF on Broad Street that we could be
22 at \$5 million of handle by 2018.

23 The arrangement we have with the horsemen's
24 group is that 50 percent of the net cash flow will
25 be split with the horsemen's groups and the VEA.

1 I point this out because this will help provide
2 additional funds for the VEA for putting on racing
3 as well as to generate money for purses.

4 So one of the things in our steps going forward
5 is we have to consider ways that the VEA can have
6 funds to put on additional races as we generate
7 funds for purses.

8 In terms of security at the facility, we'll have
9 closed circuit televisions. We'll have an alert
10 system wired to police and the fire department,
11 should there be any problems. Our staff will be
12 uniformed and will have protocols for cash
13 management, and I mentioned we will have a safe on
14 site which will be bolted to the floor in the teller
15 room.

16 Breakers has a loyal customer base. We have
17 been there a number of times. It's a sports and
18 pool facility with a clientele that's excited about
19 this activity. The ownership has been very
20 cooperative and supportive of this.

21 The parking is very good and the food is very
22 good, as we've had a few meals there, so we're
23 excited about this site. We look forward to moving
24 forward as quickly as possible and I open this up
25 for additional questions and thank you for the

1 consideration of this application.

2 CHAIRMAN VAN CLIEF: Thank you. I've got a
3 question or two just on your pro forma. I think
4 you're projecting about a 30 to 40 percent increase
5 of gross handle every year for the next four years,
6 and could you talk a little bit more about what
7 gives you the confidence to think that you will hit
8 those kind of percentage increases?

9 MR. HANNUM: Yeah. So we are basing this on the
10 fact that Breakers is going to be the only OTB in
11 Virginia, certainly for a few months, and also
12 looking at what Hurley's did when they were fully
13 operational, as well as the fact that there was the
14 larger OTB down the road when Colonial was
15 operational.

16 So based on the numbers that Hurley's handled,
17 we feel this is a reasonable estimation for this
18 facility and for the size of the facility, and we
19 hope that for the balance of this year, if we can
20 get the facility up and running quickly, we would do
21 one million five, and then looking into the first
22 full year of operation, we hope to be at three
23 million.

24 CHAIRMAN VAN CLIEF: At the same time, you are
25 projecting a \$25,000 a year expenditure, and that's

1 flat 25 a year throughout your projections from a
2 marketing standpoint. What are you going to do to
3 support -- what will that consist of, what is your
4 marketing mix and do you think that's sufficient to
5 support the kind of increases you're driving?

6 MR. HANNUM: Sure. That budget, that line item
7 can certainly be increased or decreased as
8 necessary. One of the things that we'll be doing
9 most visibly is on the outside of the building,
10 we'll be putting up signs to notify people this is a
11 site for wagering. We're going to be doing a lot of
12 advertising in the local print media. We're looking
13 at radio spots. We have our own database of
14 horsemen and supporters that we've developed over
15 the years that we'll be communicating to.

16 So we feel in the Richmond area, there's a lot
17 of different vehicles for how we can get the word
18 out, and so we are going to be utilizing all of
19 them. Again, this is going to be unique as the only
20 OTB operational in the state for some time.

21 CHAIRMAN VAN CLIEF: My last question is you
22 touched on this earlier in your presentation. Can
23 you be a little more specific about the product that
24 you are going to be importing? What will we see in
25 the way of import races and who are you going to be

1 featuring at the facility?

2 MR. HANNUM: Good question. So the initial
3 contract enables us to have eight different tracks,
4 so I'm not sure exactly who we're going to have
5 right now, but we certainly hope to have New York,
6 Florida, California, Pennsylvania races on Monday
7 and Tuesday, and then harness, as I mentioned, is in
8 the evening.

9 So I don't want to put anyone on the spot, but
10 Mary Calabrese is our consultant. Mary, I don't
11 know if you want to speak to sort of the contract
12 with the Roberts. And again, you know, that's a
13 contract that we'll be negotiating. But Mary, can
14 you tell them about that?

15 MR. LAWS: Need to swear you in real quick.

16 NOTE: Mary Calabrese is sworn under oath.

17 MR. LAWS: What's your name, please?

18 MS. CALABRESE: Mary Calabrese.

19 MR. LAWS: What's your position?

20 MS. CALABRESE: I'm the pari-mutual consultant.

21 MR. LAWS: How long have you held that position?

22 MS. CALABRESE: Six weeks.

23 MR. LAWS: You're the consultant for which
24 group?

25 MS. CALABRESE: The Virginia Equine Alliance.

1 MR. LAWS: Prior to you having this position for
2 six weeks, what was your background in pari-mutuel?

3 MS. CALABRESE: I have worked ten years at
4 Colonial Downs; two years as assistant general
5 manager and eight years as the executive director
6 for ADW, and I was the one that helped initiate the
7 kiosk networks throughout the state of Virginia.

8 Prior to that, I had worked for (inaudible)
9 Park up in Portland, Oregon as a director of
10 operations for their racing channel ADW. I worked
11 15 years at Moorefield Park as their assistant
12 general manager, and prior to that, I worked at The
13 Meadows racetrack in Pennsylvania.

14 MR. LAWS: Thank you. You can continue.

15 MS. CALABRESE: Okay. So what we're going to do
16 is get together and we're going to -- we have a
17 schedule of all of the racetracks and what dates
18 they race throughout the year.

19 We are going to put together what we feel as
20 though is going to be a good mix of racing programs,
21 and then what we will start doing is going out and
22 start requesting contracts for these simulcast
23 signals, and some of them we'll get, some we won't,
24 and some will depend on the amount we have to pay.

25 Of course what we want to do is obviously get

1 the big ones from (inaudible) group and Churchill
2 Downs, and we have a working relationship with them
3 with the ADWs here in Virginia. We feel as though
4 we'll get those signals. So it's just a matter of a
5 lot of work ahead of time to get them set up and get
6 the contracts in place.

7 So when Jeb says we have eight signals, we have
8 eight in the afternoon and eight in the evening, and
9 we can extend that if we want to. We can increase
10 the number of signals and we feel we are doing
11 better and want more racetracks.

12 We have to be careful, too, because we have so
13 many in the morning and so many in the afternoon,
14 and then we have what we call bridge racetracks, so
15 we have to be careful how we schedule everything to
16 make sure we get the most out of each signal that is
17 coming in.

18 CHAIRMAN VAN CLIEF: Thank you very much, Mary.

19 MS. CALABRESE: You're welcome.

20 CHAIRMAN VAN CLIEF: Questions from anyone else
21 for Mr. Hannum on this? I have a question for Mr.
22 Lermond. From a staff standpoint, have you had
23 ample opportunity to review the application, and if
24 so, does it meet with all regulatory and statutory
25 requirements that we are required to meet?

1 NOTE: David Lermond is sworn under oath.

2 MR. LAWS: Can you state your name for the
3 record, please?

4 MR. LERMOND: David Lermond.

5 MR. LAWS: What's your position?

6 MR. LERMOND: Acting executive secretary.

7 MR. LAWS: How long have you worked for the
8 Virginia Racing Commission?

9 MR. LERMOND: Almost 13 years.

10 MR. LAWS: Thank you. Go ahead.

11 MR. LERMOND: Yes, Mr. Chairman. I thoroughly
12 reviewed the application and it contains almost all
13 of the required information. I would draw your
14 attention to the staff report that I prepared.
15 There are six conditions at the end, so if you wish
16 to approve this application, I wish you would
17 reference those six conditions in your motion for
18 approval.

19 I'm very excited about the site. I think it's
20 in a great location. I think the owner is very
21 engaged. He's going to do everything he can to make
22 it a success, which is an important aspect at one of
23 these smaller OTBs. If the owner isn't engaged and
24 doesn't care, it doesn't stand as good of a chance
25 at being successful as when you have an owner like

1 Chris.

2 So I also would say that I think maybe their
3 projections are a little bit conservative and I tend
4 to be a little conservative when I project, frankly,
5 but it wouldn't surprise me in the first full year
6 if we do five million based on what Hurley's had
7 done and what the Broad Street OTB had been doing
8 when they were both open at the same time.

9 CHAIRMAN VAN CLIEF: Thank you. That's very
10 encouraging. Any further questions?

11 MR. LAWS: I did want to draw the Commission's
12 attention to the code of Virginia section that
13 authorizes and regulates these licenses. That's
14 code of Virginia § 59.1-383.

15 It defines what this license must say, and it
16 says the license has to be for 20 years from the
17 date of issuance. It shall designate on its face
18 the type or types of horse racing or pari-mutuel
19 wagering for which it is issued, the location of the
20 track or satellite facility where the wagers are to
21 be conducted, period during which such license is in
22 effect, 20 years, and any such other information as
23 the Commission deems proper.

24 So the license should on its face contain that
25 information and that should be determined by the

1 Commission.

2 COMMISSIONER MILLER: What is that code section
3 again?

4 MR. LAWS: 59.1-383.

5 COMMISSIONER MILLER: I have a motion to make.

6 CHAIRMAN VAN CLIEF: Commissioner Miller.

7 COMMISSIONER MILLER: I move that we grant the
8 license in accordance with the license application
9 for a satellite wagering facility at Breakers Sports
10 Grill and Bar in Henrico, Virginia by the Virginia
11 Equine Alliance, Incorporated, subject to all the
12 provisions of § 59.1-383 of the code of Virginia,
13 and subject to the recommendation set forth in the
14 Virginia Racing Commission's staff report on pages
15 four and five of that report under the title
16 recommendations; that is, the conditions one through
17 six. Got it?

18 CHAIRMAN VAN CLIEF: Thank you, Commissioner.
19 Is there a second?

20 COMMISSIONER DAWSON: I second.

21 CHAIRMAN VAN CLIEF: Second. Any further
22 discussion, questions? All in favor, please signify
23 by saying aye.

24 NOTE: The Commission votes aye.

25 CHAIRMAN VAN CLIEF: Are there any opposed?

1 None opposed. Motion carries. Thank you very much.

2 MR. HANNUM: Thank you, Commissioners. Just one
3 final point. Tab R references the group that put
4 this report together, and I just wanted to thank
5 Easter Associates, Debbie Easter, Frank Petramalo,
6 Mary Calabrese, Darryl Wood, and really the whole
7 VEA group for putting this application together. So
8 I just wanted to acknowledge them for the record.
9 Thank you.

10 CHAIRMAN VAN CLIEF: Thank you very much and
11 thank you all for getting this up and running and
12 we're looking forward to it with great excitement.

13 Okay. We may have already done this in bits and
14 pieces this morning. We are open for additional
15 public comment, if there is any. If none, then it's
16 an opportunity for additional comments from
17 commissioners. Start with our vice chairman.

18 COMMISSIONER DAWSON: Thank you, Mr. Chairman,
19 and congratulations to you for running a very
20 efficient meeting. I'm excited about the prospect
21 of a lot of the things that we discussed today and
22 I'm looking forward to continuing to work with
23 stakeholders to make improvements and finally get to
24 the point where we have our premium racing here in
25 the Commonwealth of Virginia.

1 CHAIRMAN VAN CLIEF: Thank you. Commissioner
2 Miller, comments? Commissioner Steger?

3 COMMISSIONER REYNOLDS: In the interest of time,
4 we will keep moving.

5 CHAIRMAN VAN CLIEF: Again, yes it is. Now,
6 before we go into closed session, I'd like to go
7 back to Mr. Hannum's comment on a meeting date. As
8 we did for this meeting, I'd like to set this up so
9 that you're prepared, and I'm happy to go ahead and
10 schedule a meeting.

11 I'm sure all the commissioners would come back
12 next month if you are ready with another license
13 request. We do have some committee meetings to
14 operate.

15 Commissioner Dawson's definitely planned to have
16 her Medication and Safety Committee get together
17 during the month of July so we can tend to those
18 details and have those conversations while we're
19 waiting or we can go a month now.

20 If you don't think you will be ready, I'm happy
21 to defer and we can pick a date in August,
22 understanding that I think some of us will be out of
23 town during a part of August. I know there are a
24 lot of meetings. At least I've got a whole week
25 full of them at Saratoga during that month.

1 MR. HANNUM: I would like to let you know what
2 our intention is at the next meeting or the meeting
3 after that, would be to have the license application
4 for racing at Shenandoah Downs. That will be a
5 four- or five-week process to put that together, so
6 I would be sort of leaning more towards an August
7 meeting date, and then we may have another OTB
8 license application ready. But so that would be my
9 suggestion that we perhaps skip July and look to
10 August.

11 CHAIRMAN VAN CLIEF: Okay. Do you think you'd
12 be ready early on or sometime after the 15th? If
13 you don't mind, just cross out the 8th through 15th.

14 MR. HANNUM: Why don't we do -- so you want to
15 do something maybe Tuesday the 16th?

16 CHAIRMAN VAN CLIEF: Let's go a little -- I know
17 that we are going to have some folks in Saratoga for
18 the round table conference.

19 MR. PETRAMALO: When is the round table?

20 CHAIRMAN VAN CLIEF: The round table, Frank,
21 is --

22 MR. PETRAMALO: The 21st?

23 CHAIRMAN VAN CLIEF: The round table is Sunday
24 the 14th of August. So Monday is probably a travel
25 day. You know, maybe Wednesday the 17th, Thursday

1 the 18th.

2 MR. HANNUM: That would be fine. Yeah. The end
3 of that week or early the next week. Whatever is
4 best for you all.

5 CHAIRMAN VAN CLIEF: All right. Why don't we
6 shoot for Thursday the 18th? I don't know if we may
7 lose some folks, too. There's a secondary -- the
8 13th and 14th. Let's try to go toward the end of
9 that week of the 15th, if you can wait that long. I
10 don't want to defer any longer than we have to. We
11 want to act on these license requests ASAP.

12 MR. HANNUM: Yes.

13 CHAIRMAN VAN CLIEF: So tell me what you think
14 would work best for you if you could be ready. Also
15 giving Dave Lermond ample time to go through and due
16 diligence that we require from staff.

17 MR. HANNUM: Right. Well, we could certainly
18 look at the 18th.

19 CHAIRMAN VAN CLIEF: Okay. I will ask my fellow
20 commissioners if the 18th looks like a doable day.

21 COMMISSIONER DAWSON: Yes.

22 CHAIRMAN VAN CLIEF: Let's set it for ten
23 o'clock on the 18th. If something comes up that we
24 aren't anticipating or recognizing today, then we'll
25 make changes.

1 MR. HANNUM: Thank you.

2 CHAIRMAN VAN CLIEF: Thank you. Okay.

3 Mr. Laws, at this point, I would like to take us
4 into closed session. Before we do that, I want to
5 make sure that we're all on the same page with why
6 we're going into closed session.

7 We are at the final point, I hope, today in our
8 executive search process. We're seeking some advice
9 from the Attorney General's office in that regard in
10 terms of the steps we take to make sure we're in
11 compliance with state rules, regs and statutes.

12 Given the evolution this morning, I'd also like
13 to see if we can't wrap up the open business with
14 regards to the Boucher hearing. So I would --
15 counsel, I'd seek advice in that regard, too.

16 Is there any -- I'll ask my fellow commissioners
17 do we have any other issues that we might wish to
18 discuss in a closed session that we should recognize
19 when we make the motion at this point?

20 In terms of process and before we do that, what
21 I'd like to do is go into closed session, then we
22 will recess and remaining in closed session, we're
23 going to vacate these premises because this room
24 turns over shortly and we won't have enough time.

25 We're going then to vacate to -- Sarge Reynolds

1 has very kindly made his facilities at Reynolds
2 Development available to the Commission.

3 We are authorized in closed session between now
4 and 15 days hence to conduct interviews for the
5 executive secretary position. We do have some of
6 those lined up, and if we are fortunate, we will
7 wrap that process and be in a position to make an
8 offer to a candidate by the end of today.

9 So that's the process ahead of us. So we have
10 two issues, executive search and legal advice in
11 that regards, as well as to take advice on what our
12 options are in terms of the amending the stewards'
13 decision, particularly with the punishment that was
14 handed down and bringing that issue to closure as
15 well today.

16 COMMISSIONER MILLER: Mr. Chairman.

17 CHAIRMAN VAN CLIEF: Yes.

18 COMMISSIONER MILLER: In order to close the
19 appeal that we heard today, we would have to come
20 back into open session.

21 CHAIRMAN VAN CLIEF: We will have to come back
22 into open session.

23 MR. LAWS: And have a public vote.

24 CHAIRMAN VAN CLIEF: Is there any reason we
25 can't do that this afternoon at the venue when we

1 vacate this room where we're going?

2 MR. LAWS: Yes, because the notice says that it
3 was going to take place here.

4 COMMISSIONER MILLER: Okay. So after our closed
5 session.

6 CHAIRMAN VAN CLIEF: From a timeline standpoint,
7 hopefully, we can go into closed session here, come
8 back and wrap the hearing.

9 COMMISSIONER MILLER: And then go back into
10 closed session.

11 CHAIRMAN VAN CLIEF: Then go back into closed
12 session.

13 COMMISSIONER MILLER: And vacate.

14 COMMISSIONER STEGER: We have people traveling
15 from various parts of the country here. I'm trying
16 to get in touch with them as we speak regarding I've
17 already asked for a delay, but I think if we go very
18 long in closed session, the whole schedule is going
19 to be disturbed.

20 They have airplanes to catch and things like
21 that. I had adjusted our first candidate to begin
22 the interview at two. I'm happy to come back here
23 or whatever is necessary. I don't want to -- these
24 people have gone to a lot of trouble to be here
25 today. I don't want to disrupt the interviews.

1 CHAIRMAN VAN CLIEF: What are our options from a
2 practical standpoint and still remain within our
3 legal parameter?

4 MR. LAWS: If Mr. Petramalo and his clients are
5 willing, you can continue the hearing until the next
6 public meeting of the Commission in August. Yeah.
7 I think that's the most recent one we settled on
8 today.

9 I know that's two months and people are waiting
10 to determine what the purse is, and I know funds
11 have been held up. So my legal advice would be very
12 quick. I can tell you that. I'm just going to tell
13 you what your options are, and I don't necessarily
14 think it needs to be in a closed meeting, so I can
15 do it right now if you'd like to.

16 CHAIRMAN VAN CLIEF: Let's do it.

17 MR. LAWS: The legal options for this hearing
18 are found in three sections of the Virginia
19 administrative code. The first section is 11 VAC
20 10-70-10, and that provides disciplinary actions
21 that stewards and the Commission can take are
22 revocation of a permit, suspension of a permit,
23 assessment of a fine, reprimand, probation, or any
24 combination of the above.

25 It also says disqualification. That's a ruling

1 by -- that revises the order of a finish of the
2 race. Reprimand is defined as a form of
3 disciplinary action where the holder of a permit is
4 reprovved severely in writing by the stewards or the
5 Commission.

6 So you have those options: revocation,
7 suspension, assessment of a fine, reprimand,
8 probation, disqualification or placement on the
9 stewards' list, which basically says that a horse
10 was somewhat unruly and until the Commission
11 receives sufficient evidence to show that a horse is
12 no longer unruly that the horse can't run in any
13 races.

14 COMMISSIONER MILLER: Is that part of the
15 probationary --

16 MR. LAWS: That's separate and apart from
17 probation.

18 COMMISSIONER MILLER: What do you call it?

19 MR. LAWS: The stewards' list.

20 COMMISSIONER MILLER: The horse be put on the
21 stewards' list. I think I've found it. That's in
22 11 VAC 10-70-40, Subsection 12. And then we have
23 the final option, 11 VAC 10-70-60, Subsection 19,
24 which allows the stewards of the Commission to issue
25 reprimand, assess a fine, require forfeiture or

1 redistribution of purse or award, probation,
2 suspension, revocation of a permit or exclude from
3 the grounds under the jurisdiction of the
4 Commission. So those are all of your options.

5 CHAIRMAN VAN CLIEF: Listening to the
6 conversation this morning, it seemed to be the
7 consensus of the Commission was that an infraction
8 did occur. We support or stewards' authority in the
9 box, out of the box, in the race, out of the race,
10 on that racetrack and on the grounds to take action,
11 but that there was a consensus feeling that the
12 punishment didn't match the infraction and that
13 there was a desire to do something slightly less
14 severe.

15 If we wanted to place that horse on the
16 stewards' list until the trainer could demonstrate
17 the horse is ready to run again and assess a fine
18 but a lesser amount than the purse that was
19 withheld, do we have that course of action and can
20 we do that, and if so, what steps do we have to take
21 now?

22 MR. LAWS: Yes. You can do that, and Dave or
23 Frank, please correct me if I'm wrong. If the horse
24 is placed on the stewards' list, the horse is not
25 disqualified from the race, and so the horse would

1 then be put back in the position in which it
2 finished the race and every other horse would be
3 affected in its finish in the race were to change.
4 Is that correct, Dave?

5 MR. LERMOND: Except for the first place horse,
6 which would remain in first.

7 MR. LAWS: Frank, do you agree?

8 MR. PETRAMALO: Yes. The original finish of the
9 race would stand.

10 MR. LAWS: Much more concise. Thank you.

11 MR. PETRAMALO: Let me say something about the
12 stewards' list if you're not familiar with it. It's
13 quite a common thing, certainly in the steeple
14 chasing world.

15 If you have a horse that refuses to start or is
16 unruly for some reason or other, it's quite common
17 for that horse to be put on the stewards' list, and
18 as D.G. suggested, you don't get off the stewards'
19 list unless the trainer can demonstrate that the
20 horse is no longer unruly, that the horse will start
21 when asked, et cetera. So that's quite common.

22 MR. LAWS: So then the --

23 MR. PETRAMALO: I've had a horse on the
24 stewards' list.

25 COMMISSIONER MILLER: If anybody will support my

1 motion, I will make a motion, and if anybody wants
2 to modify, then they may do so, but I move that the
3 penalty involved in this case be reduced to that
4 this horse be put on the stewards' list, no fine
5 because there were extenuating circumstances
6 involved in this, in my opinion.

7 Number one, it wasn't clear that the horses were
8 in the box. Number two, I think it occurred outside
9 the parameters of the actual race itself. Number
10 three, it's obvious from the video that the number
11 one horse, I think it was the number one horse,
12 bumped and completed the turn-around of the
13 victimized horse. So there was some culpability
14 there. It wasn't all on this accused horse.

15 COMMISSIONER REYNOLDS: I totally agree.

16 COMMISSIONER MILLER: That's my motion.

17 COMMISSIONER REYNOLDS: I'd like to second that,
18 unless there are some other commissioners that want
19 to modify it. That's exactly the way I felt.

20 CHAIRMAN VAN CLIEF: I'll be the devil's
21 advocate just for the sake of argument. I candidly
22 feel, as always is the case in these things, a bit
23 between a rock and a hard place.

24 I think the appellant makes a good argument. We
25 watched the video. There is still question in my

1 mind as to what really happened out there. The
2 video is a high enough quality to be definitive.

3 On the other hand, I'm always looking for a way
4 to be supportive of our stewards who are
5 professionals, do a good job, and I don't think call
6 infractions unless they believe they see one. So
7 I've got to give some benefit of the doubt there as
8 well.

9 COMMISSIONER MILLER: I'm not saying there
10 wasn't infraction. They saw what they saw and we
11 saw it. So my point is the extent of the
12 infraction. No doubt there was an infraction and
13 the horse was unruly. That horse caused a brush up
14 against another horse that it shared with another
15 horse.

16 CHAIRMAN VAN CLIEF: I think we agree with that.
17 I think that's well put. I would say then I'm going
18 to put this out for conversation. That given that
19 scenario that that horse did cause an infraction,
20 there is no responsibility on the part of the
21 trainer and the jockey and the owner of that horse.

22 I will suggest that we do include a fine in our
23 findings, but something less than the purse and the
24 Virginia-bred award that was at stake initially.

25 COMMISSIONER STEGER: I would consider and I

1 would suggest maybe \$2,000 or \$3,000. It's
2 significant enough.

3 MR. LERMOND: Are you fining the rider? Are you
4 fining the rider of the horse? Is that where you're
5 going?

6 CHAIRMAN VAN CLIEF: No. I think we're going,
7 fining the owner. I think we're talking about a
8 deduction from the purse payment. All right. Well,
9 I think what we have is a point of view that looks
10 like it might yield a motion that we would
11 acknowledge the infraction, put the horse on the
12 stewards' list and assess a fine of \$2,000 to
13 \$3,000. Why don't we split the difference and say
14 2500?

15 COMMISSIONER STEGER: I think something ought to
16 be done, but it should not be excessive.

17 COMMISSIONER MILLER: I hate to be an outrider
18 on this, but I swear a \$3,000 fine or a \$2,000 for
19 what I saw, it reminds me of that golf tournament
20 Sunday where the officials did probably, you know,
21 what was within their power what they thought was
22 the right thing to do, but it was absolutely out of
23 line.

24 I don't -- the stewards did their job. They saw
25 something and they did something about it, but to

1 fine this man, the rider or the owner which is his
2 wife?

3 MR. PETRAMALO: Yes.

4 COMMISSIONER MILLER: -- 2,000 or 3,000 for what
5 I saw, I have to vote no.

6 COMMISSIONER REYNOLDS: I agree with
7 Commissioner Miller. I saw the same thing. I think
8 the starter probably had -- I don't know what he
9 saw, but he had every opportunity to get them to
10 circle one more time, get straight before he dropped
11 that flag. I think he was quick to drop the flag.

12 I think that one definition about during the
13 race, I don't think they were inside the box.
14 Certainly those horses acting up weren't inside the
15 box, and you know, I concur.

16 I don't know that I would vote no, but agree
17 with Commissioner Miller that I don't know that
18 there should be a huge fine, if any. I don't think
19 there should be any, except to go on the stewards'
20 list.

21 CHAIRMAN VAN CLIEF: The vice chairman recusing
22 herself, that creates a deadlock. Commissioner
23 Steger?

24 COMMISSIONER STEGER: I will defer to my
25 distinguished colleagues to just having them on the

1 stewards' list.

2 CHAIRMAN VAN CLIEF: I do want to be supportive
3 of our stewards as well, but it looks like we are
4 three to one at this point. In that case,
5 Commissioner Miller's motion, I take it -- well,
6 let's go ahead and vote again. All in favor,
7 signify by saying --

8 COMMISSIONER REYNOLDS: To Commissioner Miller.

9 CHAIRMAN VAN CLIEF: Commissioner Miller's
10 motion is that we put the horse on the stewards'
11 list, that we do not assess a fine. We need a
12 second.

13 COMMISSIONER STEGER: Second.

14 MR. LERMOND: Mr. Chairman.

15 CHAIRMAN VAN CLIEF: Yes.

16 MR. LERMOND: What would be the conditions of
17 the horse being on the stewards' list? Would it be
18 for a set amount of time or until the horse can
19 demonstrate that it can start properly in a race?
20 There's just normally some condition when a horse is
21 on the stewards' list.

22 CHAIRMAN VAN CLIEF: Help us out a little bit,
23 Dave. If we leave that up to the stewards, what
24 would the trainer normally have to demonstrate to be
25 satisfied that the horses are a good actor again and

1 can we not leave it to their judgment?

2 MR. LERMOND: In this case, I think it should be
3 your requirement.

4 COMMISSIONER MILLER: Mr. Chairman, my motion
5 was made on the basis of my understanding of what
6 the stewards' list was. What Mr. Petramalo
7 described the stewards' list is, you're put on the
8 list until that trainer or owner of that horse can
9 come forward and show to the satisfaction of whoever
10 is running the race that that horse will behave.

11 MR. PETRAMALO: That's correct.

12 COMMISSIONER MILLER: That's the basis of my
13 motion.

14 MR. PETRAMALO: Yes.

15 MR. LERMOND: That horse can demonstrate that in
16 the next race or the race where there isn't wagering
17 involved.

18 COMMISSIONER MILLER: Yes. If they show up next
19 year and they can show that horse is a nice horse,
20 fine, and no problem, fine. If they can't, they
21 can't run.

22 MR. LERMOND: Thank you, sir. I just wanted to
23 clarify.

24 CHAIRMAN VAN CLIEF: Does that clarify it for
25 you?

1 MR. LERMOND: Yes.

2 CHAIRMAN VAN CLIEF: Okay. We have a motion, we
3 have a second. All in favor, signify by saying aye.

4 NOTE: All Commissioners except Chairman
5 Van Clief vote aye.

6 CHAIRMAN VAN CLIEF: Any opposed? Me. Okay.
7 Motion passes.

8 COMMISSIONER MILLER: I want to say one other
9 thing. Talk too much, I realize that. I'm not
10 showing non-support for the stewards. I know it's
11 important to show support for the stewards. The
12 stewards have an important job to do, but you know
13 what, we cannot go forward as a quasi judicial body
14 in the future if we have cases like this again where
15 there's any kind of more emphasis put on supporting
16 our stewards. That's not what we're here to do.

17 When we hear an appeal from a steward's ruling,
18 we're not here to determine whether or not we're
19 supporting the stewards. We're here to consider
20 facts put before us and consider the citizen out
21 there who is aggrieved. That's all I have to say.

22 CHAIRMAN VAN CLIEF: I would agree with that,
23 and I do think that some of the not necessarily
24 nuances, but the arguments made about where the
25 stewards' authority begins and ends and where the

1 law begins and ends, I think that when the horse
2 steps on the track, the owner, jockey and trainer
3 have a responsibility to the rest of the field and
4 the stewards have a responsibility to the horses. I
5 don't disagree with anything you say about that.

6 At this point then, we're ready to go into
7 closed session, and I think that at this point, we
8 only need to go to closed session to receive advice
9 on the balance of our executive search process.

10 MR. LAWS: Dave, did you have a motion you were
11 going to read to go into closed session or did you
12 want me to read it?

13 MR. LERMOND: I was not provided law.

14 MR. LAWS: All right. At this point then, the
15 Commission will have a recorded voice vote to go
16 into closed session under § 2.2-3711(A)(1) of the
17 code of Virginia, for the discussion, consideration
18 and interviews of respective candidates for
19 employment for the position of executive secretary
20 of the Virginia Racing Commission, and the Virginia
21 Racing Commission will not consider or discuss any
22 other issues besides the issue that was specifically
23 mentioned in this prospective motion. Is that
24 motion made by any commission member?

25 COMMISSIONER REYNOLDS: So moved.

1 COMMISSIONER STEGER: Second.

2 CHAIRMAN VAN CLIEF: All in favor?

3 NOTE: The Commission votes aye.

4 CHAIRMAN VAN CLIEF: Any opposed?

5 NOTE: There is no response.

6 CHAIRMAN VAN CLIEF: Thank you. In closed
7 session.

8
9 NOTE: The closed session begins at
10 1:46 p.m., and Chairman Van Clief notes for the
11 record that the meeting is adjourned at the State
12 Corporation Commission location at 1:49 p.m.

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1 CERTIFICATE OF COURT REPORTER
2

3 I, Sandra G. Spinner, hereby certify that having
4 first been duly sworn, I was the Court Reporter at the
5 meeting of the Virginia Racing Commission at the time of
6 the hearing herein.

7 Further, that to the best of my ability, the
8 foregoing transcript is a true and accurate record of the
9 proceedings herein.

10 Given under my hand this 5th day of July, 2016.
11
12

13 _____
14 SANDRA G. SPINNER
15 COURT REPORTER
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